

**TITLE III: Land Use Code and Regulations**

**Chapter IV: Zoning Ordinance**

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## TABLE OF CONTENTS

<b><u>SECTION 1.00: ADMINISTRATIVE PROVISIONS</u></b>	1
1.01 GUIDANCE FOR THE LAYPERSON	1
1.02 PURPOSE	2
1.03 AUTHORITY	3
1.04 ZONING MAPS	3
1.05 NON-CONFORMITY	3
1.06 COMPLIANCE WITH OTHER CODES	6
1.07 SAVING CLAUSE	6
1.08 INTERPRETATION, ADMINISTRATION AND ENFORCEMENT	6
1.09 SPECIAL USE PERMITS	6
1.10 ZONING BOARD OF ADJUSTMENT	7
1.11 DEFINITIONS	7
1.12 SITE PLAN REVIEW AUTHORITY	15
1.13 LOTS SPLIT BY ZONING DISTRICT BOUNDARIES	15
<b><u>SECTION 2.00: BASE ZONING DISTRICTS</u></b>	16
2.01 M-1 DISTRICT	16
2.02 M-2 DISTRICT	16
2.03 M-3 DISTRICT	18
2.04 M-4 DISTRICT	18
2.05 B-1 DISTRICT	19
2.06 B-2 DISTRICT	19
2.07 R-1 DISTRICT	22
2.08 R-2 DISTRICT	23
2.09 R-3 DISTRICT	23
2.10 R-4 DISTRICT	24
<b><u>SECTION 3.00: DIMENSIONAL REQUIREMENTS</u></b>	26
3.01 ROAD FRONTAGE	26
3.02 LOT SIZE	27
3.03 RESIDENTIAL DENSITY	27
3.04 SETBACKS	27
3.05 STRUCTURE HEIGHT	28
<b><u>SECTION 4.00: SIGNS</u></b>	31
4.01 PURPOSE	31
4.02 APPLICATION PROCESS	31
4.03 SIGN CONTENT	32
4.04 GENERAL DESIGN STANDARDS	33
4.05 REGULATIONS BY DISTRICT	34
4.06 SIGNS IN PLATTED RIGHT OF WAY	36
4.07 MAINTENANCE	36
4.08 NON-CONFORMING SIGNS	36
<b><u>SECTION 5.00: OVERLAY ZONING DISTRICTS</u></b>	37
5.01 AQUIFER PROTECTION OVERLAY DISTRICT	37
5.02 SHORELINE PROTECTION OVERLAY DISTRICT	45

5.03	WETLAND PROTECTION OVERLAY DISTRICT .....	46
5.04	CLASS A WATERSHED PROTECTION OVERLAY DISTRICT .....	50
5.05	STEEP SLOPE PROTECTION OVERLAY DISTRICT .....	50
5.06	FLOODPLAIN PROTECTION OVERLAY DISTRICT .....	51
5.07	TELECOMMUNICATIONS FACILITY OVERLAY DISTRICT .....	58
5.08	DOWNTOWN COMMERCIAL OVERLAY DISTRICT .....	62
<b>SECTION 6.00: RESIDENTIAL OPEN SPACE DESIGN DEVELOPMENT BY SPECIAL USE PERMIT .....</b>		<b>64</b>
6.01	AUTHORITY .....	64
6.02	PURPOSE.....	64
6.03	DEFINITIONS .....	65
6.04	LOCATION .....	66
6.05	SPECIAL USE PERMITS.....	67
6.06	STANDARDS FOR APPROVAL .....	67
6.07	APPLICATION PROCEDURE.....	69
6.08	APPROVAL OF APPLICATIONS .....	69
6.09	PARENT PARCEL.....	69
6.10	PARENT PARCEL.....	69
6.11	GENERAL REQUIREMENTS .....	70
6.12	OTHER REGULATIONS APPLICABLE .....	72
6.13	UTILITIES .....	72
6.14	EXPIRATION .....	72
<b><u>SECTION 7.00: OTHER REQUIREMENTS .....</u></b>		<b>73</b>
7.01	HOME OCCUPATION .....	73
7.02	MIXED USE DEVELOPMENT .....	74
7.03	ACCESSORY APARTMENTS .....	74
7.04	SEXUALLY ORIENTED BUSINESSES. ....	75
7.05	AFFORDABLE ELDERLY HOUSING.....	79
7.06	LIGHTING AND ILLUMINATION.....	84
7.07	IMPACT FEES.....	87

## **SECTION 1.00: ADMINISTRATIVE PROVISIONS.**

### **1.01 GUIDANCE FOR THE LAYPERSON.**

- (A) Read the Ordinance. To gain an understanding of this community code, it is important to read this Ordinance. Statements of purpose are included for the Ordinance as a whole and for many of the subsections to help readers understand the intent of the code.
- (B) Organization and Cross-references. To fully understand this code, it is important for the reader to understand how the Town has organized its land use codes, and how this Ordinance specifically is organized and cross-referenced.

- (1) Municipal Codes. The Town has organized all its ordinances and regulations into a single system. All land use codes and regulations have been grouped in “Title III.” Title III is further divided into chapters as follows:

Chapter I:	Planning Board Bylaws
Chapter II:	Conservation Commission Bylaws
Chapter III:	Zoning Board of Adjustment Bylaws
Chapter IV:	Zoning Ordinance
Chapter V:	Subdivision Regulations
Chapter VI:	Site Plan Review Regulations
Chapter VII:	Excavation Regulations

- (2) Organization of the Ordinance.

- (a) Sections. This Ordinance is divided into seven Sections. Each Section is simply a grouping of related issues or requirements, and readers should identify the article in which an answer is likely to be found. Information about setbacks is found in Section III (Dimensional Requirements); information about sign height restrictions is found in Section IV (Signs); and so on.

- (b) Sub-sections. Each Section is divided into sub-sections, each of which may be further divided as needed. It is easiest to use the **Table of Contents** to locate the first order of sub-sections.

- (3) Cross-referencing System. Within this Ordinance there are many references to other Sections of this code. These cross-references are provided to help the reader find needed information, and to inform the reader of related provisions. This subsection explains the method of cross-

referencing to help the unfamiliar reader. The reference for this sub-section would be written as follows:

§1.01(B)(3)

The symbol “§” means section. In all cases, the information following the “§” starts with the Section, then the sub-sections in descending order. Additional levels of hierarchy would be shown as follows:

§1.01(B)(3)(c)[2][e]

The reader should note that only the first letter is capitalized, and that the rounded parentheses are used before the square parentheses. Also, the text of each level of hierarchy is indented farther than the previous level.

**1.02 PURPOSE.** The general purpose of this Ordinance is to guide the character of growth, development and change in order to provide for the public health, safety, and general welfare. Throughout this Ordinance, the Town seeks to balance the process of growth, development and change with the need to preserve and enhance those qualities, which make Newmarket a safe and desirable place to live, work and visit. In keeping with this general purpose, the following are specific objectives:

- (A) Lessen vehicle congestion in the streets;
- (B) Secure safety from fires, panic and other dangers;
- (C) Provide adequate sunlight and air circulation;
- (D) Prevent overcrowding of land and avoid undue concentration of population;
- (E) Facilitate adequate provision of public facilities, utilities and services;
- (F) Provide for adequate child day care;
- (G) Assure proper use of natural resources; and

- (H) Implement the policies of the Newmarket Master Plan, including, but not limited to:
- (1) enhance the built environment and aesthetic qualities of the Town;
  - (2) enhance the downtown village area by providing an appropriate mix of uses, improving its appearance, maintaining its traditional New England character, enhancing its pedestrian orientation, and promoting mixed use mill re-development;
  - (3) promote commercial development, including opportunity for home-based work, to broaden the tax base and employ residents;
  - (4) enhance the quality of life and foster tourism by enhancing the Town's natural beauty, ecological integrity, and natural recreational amenities such as the downtown waterfront, Great Bay and the Lamprey River;
  - (5) provide for a variety of quality living arrangements, with emphasis on quality neighborhoods; and
  - (6) protect the sense of community and friendly small town atmosphere.

### **1.03 AUTHORITY.**

- (A) Authority. Authority to adopt the Zoning Ordinance is granted by the State to the Local Legislative Body by RSA 674:16, and is conditioned by RSA 674:18, which requires that the Planning Board adopt objectives and land use sections of the Master Plan prior to adoption of the Zoning Ordinance.
- (B) Resolution. Pursuant to the grant of authority, and finding that the Planning Board adopted objectives and a land use section of the Newmarket Master Plan on November 1, 1994, the Town Council hereby repeals the previous Zoning Ordinance and adopts this new Zoning Ordinance, as proposed by the Planning Board.

**1.04 ZONING MAPS.** There shall be a Zoning Map for the Town of Newmarket, which sets forth the base zoning district boundaries. The Zoning Map shall be available for public inspection at the Newmarket Town Offices in the Planning Board Office. This map shall be used for all interpretations of base zoning district boundaries.

**1.05 NON-CONFORMITY.** This section specifies those rights to which non-conforming uses, structures and lots are entitled.

(A) Non-conforming Use. The following control non-conforming uses:

- (1) Any lawful non-conforming use may continue indefinitely. In the event that such use is abandoned for any period of time, its reestablishment shall not be permitted.
- (2) Certain districts prohibit single-family residential use, and in such districts, the pre-existing single-family use is non-conforming. To prevent this Ordinance from being unduly burdensome on a non-conforming single-family residential use, such single family houses shall be permitted to be physically expanded, and accessory structures added or expanded. All other requirements of this Ordinance shall apply. There shall be no increase in the number of residential units on the lot, and accessory apartments shall be prohibited.
- (3) Certain districts prohibit specific business/civic uses (see definition of business/civic), and in such districts these preexisting uses are non-conforming. To prevent this ordinance from being unduly burdensome on these preexisting, non-conforming use the Planning Board may grant a Special Use Permit for the expansion of these uses under the following conditions:
  - (a) the expansion shall not be greater than 30% of the floor area dedicated to the use at the time the use became non-conforming;
  - (b) The lot on which the use exists shall conform with all dimensional requirements of the Zoning Ordinance in existence at the time of application for the Special Use Permit;
  - (c) all expansions of these non-conforming uses shall require site plan review, regardless of the size of the expansion. If the expansion is too small to otherwise qualify for site plan review, the requirements of minor site plan review shall apply.

(editorial note: Subsection 1.05 (A)(3) was added May 7, 1997)

(B) Non-conforming Structure. The following control non-conforming structures:

- (1) Where an existing structure violates the setback requirements, horizontal expansion of the structure within the setback may be allowed if granted a Special Exception by the ZBA. The ZBA shall grant the Special Exception only if the following conditions are met:

- (a) the expanded structure is no closer to the lot line than the existing structure.
  - (b) the expansion is not in the 100-year floodplain.
  - (c) the owner demonstrates that no other expansion, which reasonably fulfills the intended purpose, can be achieved in conformance with this Ordinance.
  - (d) sanitary sewage disposal and water supply are provided if needed.
  - (e) the expansion shall not render the lot proportionally less adequate.
  - (f) the expansion does not adversely affect abutting properties, public health, safety or general welfare.
- (2) Portions of structures within a setback may be enclosed or expanded upwards if granted a Special Exception by the ZBA. The ZBA shall grant the Special Exception only if the following conditions are met:
  - (a) If an upward expansion, it shall not have any adverse impact on any neighboring property, including but not limited to blocking of views and/or sunlight.
  - (b) If an upward expansion, it shall not exceed the maximum height limitations specified in this Ordinance.
  - (c) No part of the structure is located within the 100-year floodplain.
  - (d) the expansion shall not render the lot proportionally less adequate.
- (c) Non-conforming Lot. The following control non-conforming lots:
  - (1) No action shall be permitted to change the boundary of the lot unless it brings the lot closer to conformance with this Ordinance, and it makes no other aspect of the lot and/or all structures thereon more non-conforming.
  - (2) If the water body setbacks of § 5.02 cannot be achieved on an undeveloped pre-existing lot because the lot does not have sufficient depth from the water body, a new structure shall be permitted if granted a Special Exception by the ZBA. The ZBA shall grant the Special Exception only if the following conditions are met:



- (a) Sanitary water supply and sewage disposal are provided, and if on-site, the sewage disposal is located as far from the water body as is feasible or necessary;
- (b) Non-water body setbacks shall be reduced by up to 75% before the water body setback is reduced, ensuring maximum protection of the water body and shoreline.
- (c) The structure shall not be located within the 100-year floodplain.

**1.06 COMPLIANCE WITH OTHER CODES.** As specified in RSA 676:14, whenever the requirements of this Ordinance differ from the requirements of another existing local code, the provision, which imposes the greater restriction, or higher standard shall be controlling. This same principal shall also apply where local codes differ from State or Federal codes.

**1.07 SAVING CLAUSE.** If any portion of this Ordinance is found invalid by a court of competent jurisdiction, this finding shall not invalidate the remainder of this Ordinance.

**1.08 INTERPRETATION, ADMINISTRATION AND ENFORCEMENT.** The Code Enforcement Officer shall have sole authority to interpret, administer and enforce this Ordinance. The Code Enforcement Officer shall have at her or his disposal all legally available means to fulfill these responsibilities. Decisions of the Code Enforcement Officer are appealable to the Zoning Board of Adjustment.  
(editorial note: this section amended May 7, 1997)

**1.09 SPECIAL USE PERMITS.** Pursuant to RSA 674:21,I(i), a provision which permits flexible and discretionary zoning among other innovative land use controls, the Town offers certain discretionary authority to the Planning Board in limited cases where generally stated standards appear inappropriate.

- (A) Special Use Permits are provided in the following sections: § 2.01(B)(2) for optional uses in the mills; § 2.04(B)(2)(a) for self-storage facilities within existing buildings in the mills; § 2.04(B)(2) for optional uses related to the golf course or outdoor recreation; § 5.07(B)(3) for siting telecommunications facilities; and § 7.01(B)(3) for permitting large home-based businesses. (editorial note-this section amended August 2, 2000)
- (B) Process. As required by RSA 676:4,I, the Planning Board shall process requests for Special Use Permits using the procedures of the Subdivision Regulations. The Board shall grant the Special Use Permit upon finding that the proposal is consistent with the purposes of this Ordinance. Specific criteria may be specified in the text of this Ordinance. In addition to these, if specified, the Board shall review the general purpose of the Ordinance as well as the purpose of the specific section of the Ordinance to make its decision.

**1.10 ZONING BOARD OF ADJUSTMENT.** This Ordinance provides for the establishment of the Zoning Board of Adjustment (ZBA) as required per RSA 673:1,IV. With respect to this Ordinance, the ZBA shall review and decide on appeals from administrative decisions, applications for the Special Exceptions, applications for Variances, and applications for an Equitable Waiver of Dimensional Requirements. The Town Council shall appoint five members and up to five alternate members to the ZBA.  
(editorial note: this section amended May 7, 1997)

**1.11 DEFINITIONS.** As used in this Ordinance, the following terms shall have the meanings indicated:

**Accessory.** A structure or use subordinate and customarily incidental to a primary structure or use on the same lot.

**Accessory Apartment.** A self-contained residential unit, complete with its own kitchen and bathroom, incorporated within an existing single family residential structure, which is subordinate to the primary residence and is either a studio apartment or a one bedroom apartment. (editorial note: Definition amended May 7, 1997)

**Alternative Tower Structure** - The use of alternative structures such as man-made trees, clock towers, bell steeples, light poles, water towers, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers and their appurtenances. (editorial note: Definition added May 6, 1998)

**Animal Husbandry.** Agricultural activity, which involves animals, which produce manure or other wastes, which would or could be considered objectionable to the surrounding neighborhood.

**Antenna** - Any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, repeater, or any other communications through the sending and/or receiving or electromagnetic waves of any bandwidth. (editorial note: Definition added May 6, 1998)

**Automotive Repair.** A building, premises, or land in which or upon which a business, service, or industry involving the maintenance, servicing, repair, or painting of vehicles is conducted. The dispensing of fluids, including fuels, oil, and antifreeze shall be included in this use. (editorial note: Definition added May 7, 1997)

**Bed & Breakfast.** An use in which an occupied single family residence also offers for public hire up to three rooms for overnight accommodation, and offers meals prepared in the kitchen of the residence. This use shall be subordinate to the residential use of the structure and lot.

**Board.** The Planning Board.

**Business/Civic.** For the purposes of the Zoning Ordinance only, this shall mean all uses except; Single Family Residential, including manufactured housing; Single Family Residential, excluding manufactured housing; Duplex Residential; Multi-Family Residential; and Student Housing. (editorial note: Definition added May 7, 1997)

**Campground.** A plot of ground upon which two or more campsites are located, established, or maintained for occupancy by camping units as temporary living quarters for recreation, education, or vacation purposes. (editorial note: Definition added May 7, 1997)

**Child Day Care.** The care and supervision of a child (any person under 18 years of age) away from the child's home and apart from the child's parents. (Also see: definitions for "Child Day Care, Family" and "Child Day Care, Family Group"; and RSA 170-E:2.)

**Child Day Care, Family.** A use equivalent to the State definition of "family day care home." This is a use in an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for up to 6 children from one or more unrelated families. The 6 children shall include any foster children residing in the home and all children who are related to the caregiver except children who are 10 years of age or older. In addition to the 6 children, up to 3 children attending a full day school program may also be cared for up to 5 hours per day on school days and all day during school holidays.

**Child Day Care, Family Group.** A use equivalent to the State definition of "family group day care home." This is a use in an occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for 7 to 12 children from one or more unrelated families. The 12 children shall include all children related to the caregiver and any foster children residing in the home, except children who are 10 years of age or older. In addition to the 12 children, up to 5 children attending a full day school program may also be cared for up to 5 hours per day on school days and all day during school holidays.

**Civic Use.** Land areas and/or structures, publicly or privately owned, which are intended for the use, enjoyment and benefit of the community. Examples include, but are not limited to, the Town Offices, the Post Office, the Community Center, and churches.

**Commercial Amusement.** An establishment engaged in providing amusement or entertainment for a fee or admission charge, and in which the patron is engaged on the premises as an active participant rather than a spectator.

**Commercial Excavation.** A land area, which is used, or has been used, for the commercial taking of earth, including all slopes. (See also RSA 155-E:1)

**Conference Center.** A facility used for conferences and seminars, which may include accommodations for sleeping, food preparation and eating, recreation, entertainment, resource facilities, and meeting rooms. If sleeping accommodations are a part of the facility, only 25% of the accommodations may be rented by transients at any point in time. (editorial note: Definition added May 7, 1997)

**Country Club.** Land and structures customarily associated with a golf course, comprising a club house, recreational facilities, and other accessory uses, and open to members and their guests or open to the public.

**Cultural Use** - Establishments that document the social and religious structures and intellectual and artistic manifestations that characterize a society and include museums, art galleries, and botanical and zoological gardens of a natural, historic, educational, or cultural interest. (editorial note: Definition added May 6, 1998)

**Education Facility.** A building or part thereof, which is designed, constructed, or used for education or instruction in any branch of knowledge. The facility may be publicly or privately owned.

**FAA** - An acronym meaning Federal Aviation Administration. (editorial note: Definition added May 6, 1998)

**FCC** - An acronym meaning Federal Communications Commission. (editorial note: Definition added May 6, 1998)

**Forestry and Agriculture.** Establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, performing forest services; or the production, keeping, or maintenance for sale, lease, or personal use of plants and/or animals useful to humans, including but not limited to: forages and sod crops, grains and seed crops, livestock, bees and apiary products, fruits of all kinds, nuts, berries, and/or flowers. (editorial note: Definition added May 7, 1997)

**Frontage.** That portion of the property boundary shared with a road right-of-way meeting the criteria listed in § 3.01(B).

**Golf Course.** A tract of land laid out for at least nine holes for playing the game of golf and improved with trees, greens, fairways, and/or hazards. This shall not include miniature golf or other such commercial amusements. (editorial note: Definition amended May 7, 1997)

**Height** - Shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure or appurtenance, even if said highest point is an antenna or other appurtenance. (editorial note: Definition added May 6, 1998)

**Hotel.** A facility offering transient lodging accommodations to the general public, with access to rooms through a main lobby and/or common hallways. Such use may provide accessory services such as restaurants, meeting rooms, entertainment, and recreational facilities.

**Housing, Age-restricted (elderly).** Housing designed for and rented, leased or sold specifically to the elderly, specifically housing that qualifies as elderly housing under the Federal Fair Housing Act.

(editorial note: Definition added May 7, 1997)

**Housing, Student.** Dormitory style housing in which a structure has been divided in a number of separately rented bedrooms with a common bathroom. Other common rooms may include a kitchen, living room, recreation room, etc.

(editorial note: Definition added May 7, 1997)

**Indoor recreation.** An establishment that provides facilities for aerobic and anaerobic exercise, swimming, playing courts, shooting ranges, or similar indoor activities and facilities.

(editorial note: Definition added May 7, 1997)

**Lounge.** An establishment where alcoholic drinks may be purchased for on-site consumption. This may include brewpubs, which brew beer and other such beverages for sale and consumption on-site only.

**Manufactured Housing.** Any structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. This shall not include pre-site built housing as defined in RSA 674:31-a.

**Manufacturing.** An establishment engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as lubricating oils, plastics, resins or liquors, but which does not fit the definition of Light Manufacturing.

**Manufacturing, Light.** The fabrication, processing, finishing, assembly, packing or treatment of articles or merchandise conducted solely within a totally enclosed structure, and operated in a manner which is not offensive, noxious, detrimental or dangerous to surrounding areas by reason of dust, smoke, fumes, odor, noise, light, or other adverse environmental effect.

**Marina.** A facility for the storing, servicing, fueling, berthing, and securing of boats, and may also include eating, sleeping and retail facilities for owners, crews and guests.

**Medical Care Facility.** A structure, not exceeding 7,500 square feet in gross floor area that houses health services providers.

**Non-Conforming Lot.** A lot, which does not comply with the dimensional requirements of this Ordinance.

**Non-conforming Structure.** That portion of a structure which does not comply with the requirements of this Ordinance.

**Non-Conforming Use.** A use which is not permitted in the base zoning district or overlay district in which it is located.

**Non-Conformity.** A use, structure, lot or site improvement, which was lawfully in existence prior to the enactment of the zoning requirement, which would otherwise have prohibited it.

**Nursing Home.** An institution or a distinct part of an institution that is licensed or approved to provide health care under medical supervision for twenty four or more consecutive hours to two or more patients who are not related to the governing body by marriage, blood, or adoption. Generally, these are homes for the infirmed elderly.

(editorial note: Definition added May 7, 1997)

**Office.** A room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government and generally furnished with desks, tables, files, computers, and communications equipment. This may include areas for customers to be served, such as the lobby at a bank.

**Outdoor Recreational Facility.** A facility that is the primary use of a property and is designed for outdoor recreational activities, but specifically excluding racetracks for motorized vehicles. Examples of outdoor recreational facilities include, but are not limited to; playing fields, tennis courts, running tracks, playgrounds, and swimming pools. (editorial note: Definition added May 7, 1997)

**Out-of-Home Adult Day Care.** A use similar to child day care, but provided for adults in need of assistance. The care and supervision of an adult (any person 18 years of age or older) in need of assistance while away from that person's home and apart from the person's care givers.

**Place of Assembly.** A facility, which accommodates a gathering of people who are jointly engaged in a singular activity. This shall include, but not be limited to, a church, meeting hall, gymnasium, sports stadium, and auditorium. The facility may be publicly or privately owned.

**Pre-existing Towers and Antennas** - Any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance. Additionally, any tower or antenna lawfully constructed in accordance with this ordinance that predates an application currently before the Board. (editorial note: Definition added May 6, 1998)

**Research and Development.** An establishment or other facility for carrying on investigation in the natural, physical, or social sciences, which may include engineering or product development. (editorial note: Definition added May 7, 1997)

**Residence, Duplex.** A single structure containing two residential units, neither of which is an accessory apartment.

**Residence, Multi-Family.** A single structure containing three or more residential units, none of which is an accessory apartment.

**Residence, Single Family.** A detached structure containing one residential unit, with or without permitted accessory apartments.

**Residential Home-Care Facility.** Group residence occupied by people in need of assistance in their daily lives. Such facilities are designed and operated to house people with similar or common needs, such as a facility for frail elderly people, or people recovering from head injuries. Professional supervision and some services such as health monitoring, recreational activities, and transportation may be an integral component of the use.

**Residential Unit.** One or more rooms, designed, occupied, or intended for occupancy as a separate living quarter, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single household or family.

**Restaurant.** An establishment where food and drink are prepared, served and either consumed on site or taken out to consume elsewhere.

**Retail.** Selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. This shall not include yard sales and other such activities, which are incidental to a residential use, unless such incidental activities exceed seven days per year.

**Self-Service Storage Facility.** A structure containing storage spaces of varying sizes leased or rented on individual leases for varying periods of time and specifically for dead storage only, excluding the storage of hazardous or flammable chemicals and explosives. (editorial note: Definition added May 7, 1997)

**Service (or Service Use).** A commercial use, which primarily provides services to people or businesses. There may be incidental retail or office activity, but the primary

commercial activity is service. Examples include, but are not limited to, beauty salons and barbershops.

**Setback.** The horizontal distance between a structure and the lot boundaries, measured at right angles or radial to the lot boundary.

**Sign.** Any display of lettering, logos, colors, lights, or illumination visible from the property lines, which either conveys a message to the public, or intends to advertise, direct, invite, announce, or draw attention to, directly or indirectly, a use conducted, goods, products, services or facilities available, either on the lot or on any other premises. For purposes of this Ordinance, “sign” shall exclude: merchandise display; federal, state, county or municipal property of any sort; necessary highway traffic control or parking control devices on public or private rights-of-way; and municipally assigned structure numbers.

**Sign, Freestanding.** A self-supporting sign not attached to any building, wall or fence, but in a fixed location. This does not include movable signs.

**Sign Height.** The measure from undisturbed ground directly under the sign to the top of the message area.

**Sign Message Area.** The total area used to display a sign’s message including all lettering, designs, symbols, logos, together with but not including the support framework, bracing and base, provided that these features remain incidental to the sign itself. Where the message area consists of letters, symbols, logos or devices affixed to the surface of a structure, wall, awning or window, the message area shall be measured by a single, continuous, rectangular perimeter drawn to enclose the extreme limits of the sign elements. The message area of one side of a double faced sign shall be regarded as the total message area of the sign, provided that each of the double faces is parallel to, and attached directly to the other.

**Sign, Movable.** A sign capable of being readily moved or relocated, including portable signs mounted on a chassis and wheels, or supported by legs.

**Sign, Neon.** Used in the colloquial sense, to indicate the type of sign generally made with shaped glass tubes filled with gas (typically a noble gas such as neon or argon) which radiate colored light when an electric current is added. For purposes of this Ordinance, a neon sign is not considered an internally illuminated sign but is defined separately.

**Sign, Off-Site.** A sign, which is not located on the lot to which its message refers.

**Sign, Off-Site Commercial.** A sign with a commercial message relating to a commercial activity not conducted on the lot on which the sign is located.



**Sign, Projecting.** A sign which is affixed to the wall of a building and which extends more than 12 inches beyond the surface to which it is affixed.

**Sign, Wall.** A sign affixed to the wall of a building or to an awning, provided the sign does not extend more than 12 inches beyond the surface to which it is attached.

**Sign, Window.** A window, or portion thereof, on which sign message is displayed, whether by permanent or temporary attachment, but exclusive of merchandise display.

**Special Exception.** A process by which the Zoning Board of Adjustment alters the standard provisions of this Ordinance in a manner specified in this Ordinance, and only when conditions specified in this Ordinance apply.

**Structure.** Anything constructed or erected, on or in the ground, or an attachment to something having a fixed location on the ground, including: permanent or temporary buildings; carports; porches; and other building features including stacks and antennas. This definition shall not include sidewalks, fences, driveways, septic systems, utility poles or lines, boundary markers, flagpoles, or retaining walls.

**Structure Height.** The vertical distance from the lowest point of finish grade at the base of the structure to the highest point of the structure, but excluding chimneys, lightning rods and other such appurtenances.

**Studio.** The workshop of an artist, sculptor, photographer, or craftsman.

**Telecommunications Facilities** - Any structure, antenna, tower, or other device which provides commercial mobile wireless services, cellular telephone services, specialized mobile radio communications (SMR), enhanced specialized mobile radio (ESMR), and personal communications service (PCS), paging services, and common carrier wireless exchange access services or similar services marketed to the general public or commercial user. (editorial note: Definition added May 6, 1998)

**Tower** - Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term also includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures, and similar structures. (editorial note: Definition added May 6, 1998)

**Warehouse.** A structure or space used primarily for the storage of goods and materials.

**Wholesale.** Selling merchandise: to retailers; to industrial, commercial, institutional or professional business users; or to other wholesalers.

**1.12 SITE PLAN REVIEW AUTHORITY.** The Planning Board, in accordance with RSA 674:43, is empowered to review and approve or disapprove site plans for the development or change or expansion of use of tracts for non-residential uses or for multi-family dwelling units, whether or not such development includes subdivision or re-subdivision of the site.

- (A) It shall be the duty of the Town Clerk to file with the Rockingham County Register of Deeds a certificate of notice showing that the Planning Board has been so authorized, and giving the date of such authorization.
- (B) This authority was originally granted to the Board on November 7, 1984, and was re-affirmed in the 1991 Town Charter, and is re-affirmed on the date of adoption of this Ordinance.

**1.13 LOTS SPLIT BY ZONING DISTRICT BOUNDARIES.** Where an existing lot of record falls into more than one zoning district, the following shall apply:

- (A) For lots, which are large enough, to be subdivided, the provisions of each district shall be applied separately to each portion of the lot.
- (B) For lots, which are not large enough, to be subdivided, the provisions of the district, which comprises the largest share of the lot, shall apply to the entire lot.

## **SECTION 2.00: BASE ZONING DISTRICTS.**

### **2.01 M-1 DISTRICT.**

- (A) Purpose. The purpose of this district shall be to provide for the ongoing use of the mill buildings in the downtown. It is recognized that the abandonment of these buildings would be a detriment to the community, and especially to the village and waterfront areas. It is also recognized that proper use and redevelopment within this district must be directed to enhance the quality of the village, protect the important historic resources within the district, and enhance the downtown Lamprey River waterfront.
- (B) Permitted Uses.
  - (1) Uses permitted by right are listed in the **Table of Permitted Uses**.
  - (2) Special Use Permit. Uses other than those specified in the Table of Permitted Uses may be allowed if granted a Special Use Permit by the Planning Board. The granting of such permit shall require the Board to find that the proposed use is consistent with the purposes of this district, is suitable for the location proposed, and would not cause significant adverse impacts.
    - (a) Self-storage Facilities may be approved by the Planning Board if granted a Special Use Permit. Special Use Permits for Self-Storage Facilities shall only be granted if they are located entirely within an existing building(s); and if granted Site Plan Review Approval. (editorial note: Subsection adopted August 2000).

### **2.02 M-2 DISTRICT.**

- (A) Purpose. The purpose of this district shall be to protect and enhance the commercial, social, civic and residential functions of the downtown village area. It is recognized that the village is an important place of business and of social interaction. Controls are intended to enhance the village by providing for relatively high density, a mix of uses, public access to the Lamprey River, and design compatible with the pedestrian scale and historic nature of the area.
- (B) Permitted Uses.
  - (1) Uses permitted by right are listed in the **Table of Permitted Uses**.
  - (2) The following uses may be permitted by Special Exception, provided that they meet the accompanying standards:

- (a) multi-family residential.

Conditions:

- [1] Preparation and acceptance by the ZBA of a fiscal impact statement which, in addition to analyzing general impacts, assesses school impacts in particular; and
- [2] Preparation and acceptance by the ZBA of a market analysis which demonstrates the feasibility of added multi-family housing in a community which already has an over-abundance of multi-family housing, sufficient to ensure reasonable expectation of ongoing occupancy of units to support maintenance and upkeep of the property.

- (C) Design Standards. The following design standards shall apply in this district, and are intended to enhance the pedestrian environment and to protect and enhance overall character of the village:

- (1) Building Orientation. To ensure that the village area retains its pedestrian orientation, all new buildings shall face the primary street on which the lots fronts. Further, the primary pedestrian access shall be located on the front of the building.
- (2) Outdoor Seating. Restaurants, with or without lounge use, may have outdoor seating. Site Plan Review approval shall indicate the total number of seats permitted for the use, and shall designate the area in which seats can be located outdoors. This outdoor seating option is not available to lounge-only uses or to social clubs.
- (3) Outdoor Merchandise Display and Sales. Outdoor display and sales of merchandise is permitted in areas designated on an approved site plan.
- (4) Awnings. Awnings over doors and windows along streets are encouraged to enhance the pedestrian environment. A minimum clearance of seven feet shall be required where the awning projects over a public sidewalk, and awnings shall not be subject to the setback requirements, and may have 10% of their area covered with a commercial message.
- (5) Drive-Through Facilities. Drive-through facilities shall be prohibited in this district because the intent is to encourage pedestrian-oriented design in the village, and to encourage the vehicle-oriented businesses to locate in other districts.

- (6) On-Site Parking. On-site parking shall not be allowed between the front of the primary structure and the street.

## **2.03 M-3 DISTRICT.**

- (A) Purpose. The purpose of this district shall be to provide additional area for the development of professional office space and health care related uses, which are compatible with the existing nature and character of this predominantly residential neighborhood, to be accomplished to the extent possible through the re-use of existing buildings in the district.
- (B) Permitted Uses.
  - (1) Uses permitted by right are listed in the **Table of Permitted Uses**.
  - (2) The following uses may be permitted by Special Exception, provided that they meet the accompanying standards:
    - (a) medical care facility, office, light manufacturing, place of assembly, or out-of-home adult day care.

### Conditions:

- [1] The existing residential structure shall be re-used with only minor exterior changes, or where a new structure must be constructed, the new structure shall be designed and constructed in a manner which is compatible with the scale, design and site arrangement of the surrounding neighborhood.
- [2] Re-use of the structures may be required in whole or in part as determined feasible by the ZBA.

## **2.04 M-4 DISTRICT.**

- (A) Purpose. The purpose of this district shall be to provide for the ongoing use of the golf course, and to facilitate adjacent commercial and residential development related to the golf course use.
- (B) Permitted Uses.

- (1) Uses permitted by right are listed in the **Table of Permitted Uses**.
- (2) Special Use Permit. Uses other than those specified in the Table of Permitted Uses may be allowed if granted a Special Use Permit by the Planning Board. The granting of such permit shall require the Board to find that the proposed use is consistent with the purposes of this district and is related to golf or outdoor recreation, is suitable for the location proposed, and would not cause significant adverse impacts.

## **2.05 B-1 DISTRICT.**

- (A) Purpose. The purpose of this district shall be to provide areas suitable for businesses, which serve the community and/or people passing through Town on Route 108. It is further intended that these businesses be segregated from residential uses to prevent conflict and undue impact on residents by business development.
- (B) Permitted Uses. Uses permitted by right are listed in the **Table of Permitted Uses**. For lots in this district, which have access solely from New Road, a single-family use, which may be manufactured housing, shall also be a permitted use.
- (C) Design Standards. The following design standards shall apply in this district, and are intended to protect and enhance the aesthetic qualities and character of the district:
  - (1) Structure Re-Use. It is the intent of the Town that existing structures, which enhance the character of the neighborhood, be re-used. This may be required to the extent feasible by the Planning Board during the Site Plan Review process.
  - (2) Outdoor Seating. Restaurants and/or lounges may move tables and seats outdoors as weather permits. Site Plan approval shall limit total seating, and outdoor seating shall be restricted to areas designated for this purpose on the site plan.
  - (3) Outdoor Merchandise Display and Sales. Outdoor display and sales of merchandise is permitted in areas designated on an approved site plan.

## **2.06 B-2 DISTRICT.**

- (A) Purpose. The purpose of this district shall be to provide a large area available for commercial, business and industrial development within the Town to broaden the tax base and provide for employment opportunities for residents of the Town and

region. This district shall provide for these uses and shall exclude residential uses. This protects residents from undue impact, reduces possible sources of conflict and resulting delay for applicants, and reserves this area for the long term commercial, business and industrial development desired by the Town.

(B) Permitted Uses.

- (1) Uses permitted by right are listed in the **Table of Permitted Uses**.
- (2) The following uses may be permitted by Special Exception, provided that they meet the accompanying standards:
  - (a) Support Uses. This shall include other uses which are subordinate to and serve the primary uses within this district. The final determination of the types of uses shall be made by the Zoning Board of Adjustment, but shall include at a minimum day care, restaurant, dry cleaning, and business and/or personal services. The intent is to provide for the basic needs of the people working in this district without generating excessive amounts of traffic outside of the district.

Conditions:

- [1] the support uses shall not occupy more than 10% of the land area of the district.
- [2] the support uses are reasonably expected to provide service to employees, customers and businesses within this district to a greater extent than they will generate new trips from other districts.

**2.07 B3 DISTRICT.** (editorial note: added May 7, 2003)

- (A) Purpose. The purpose of this district shall be to provide a large area available for commercial, business and industrial development within the Town to broaden the tax base and provide for employment opportunities for residents of the Town and the region. This district shall provide for these uses and shall exclude residential uses as principal uses. This protects residents from undue impact, reduces possible sources of conflict and resulting delay for applicants, and reserves this area for the long term commercial, business and industrial development desired by the Town. This development pattern will provide for areas in the outer areas of Town with adequate access underutilized for residential uses.

(B) Permitted Uses.

- (1) Uses permitted by right are listed in the Table of Permitted Uses.

(C) Flexible Use Development

In accordance with RSA 674:21, the Planning Board shall have sole authority to approve a flexible use development by conditional use permit. The intent of this permit is to provide for additional use opportunities that may not be listed within the Table of Permitted Uses but can be shown to be consistent with the purpose of the District. The following criteria shall be used in conjunction with the requirements of this ordinance for granting a conditional use permit:

- (1) The permit is in the public interest.
- (2) There will be no greater diminution of neighboring property values than would be created under any other use permitted in the zone.
- (3) There are no existing violations of State or Federal law and/or the Newmarket Zoning Ordinance or Regulations on the subject property.
- (4) The character of the area shall not be adversely affected as determined by consideration of the projects effect on:
  - (a) Architecture
  - (b) Transportation
  - (c) Scale of lot coverage
  - (d) Scale of building size
  - (e) Consistency of uses in the immediate area.
- (5) The granting the permit will not result in undue municipal expense. Applicants shall be required to offset such expenses or the permit will be denied.
- (6) The proposed use will be developed in a manner consistent with the spirit and intent of the ordinance and Newmarket Master Plan.
- (7) The capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.
- (8) The following impacts resulting from the granting of the permits have been mitigated to the extent practical:
  - (a) Noise
  - (b) Light
  - (c) Transportation



- (d) Visual effects
- (9) Landscaped or other appropriate buffers of sufficient opacity and materials shall be required if deemed reasonably necessary for the welfare of neighboring properties or the Town.
- (10) All developments shall have frontage on an existing or proposed Class V town

**2.08 R-1 DISTRICT.** (editorial note: district boundary revised May 7, 2003)

- (A) Purpose. The purpose of this district shall be to provide for the protection of the rural, unspoiled character and open spaces of the outlying areas on the eastern and western sides of Town, while accommodating development of high quality residential neighborhoods with low overall density.
- (B) Permitted Uses.
  - (1) Uses permitted by right are listed in the **Table of Permitted Uses**.
  - (2) The following uses may be permitted by Special Exception, provided that they meet the accompanying standards:
    - (a) Neighborhood convenience store. The Town desires to provide for a few small neighborhood convenience stores in the rural neighborhoods in Town to serve the residents of those areas. The intent is to reduce the need for people to drive long distances for convenience products, and to prevent traffic congestion and parking problems in the village. The intent has nothing to do with employment or economic development, so design and use are strictly controlled to protect the rural character of the district. The following shall apply:

Conditions:

- [1] The lot complies with all dimensional requirements of this Ordinance.
- [2] All retail activity shall be conducted indoors. There shall be no outdoor product display or sales.
- [3] Because the use shall be relative inconspicuous, a wall sign shall be permitted in addition to all other signage

otherwise permitted in the district. The message area of the wall sign shall not exceed 12 square feet, and shall not be illuminated.

- [4] The use shall be limited to not more than 1,000 square feet of gross floor area, including all storage and other space associated with the use.
- [5] The products sold shall generally be of the type sold at convenience stores, intended for the consumption of area residents. Take out foods may be a part of the use, but shall not be the exclusive or dominant product.
- [6] The sale of gasoline, diesel, or other fuels shall be prohibited.
- [7] Site Plan Review approval shall be required.
- [8] The neighborhood convenience store shall be permitted on the same lot as a single-family residence. It may be located in the same structure or in a separate structure.

**2.09 R-2 DISTRICT.** (editorial note: district boundary revised May 7, 2003)

- (A) Purpose. The purpose of this district shall be to provide for an area of transition between the low-density R-1 residential district and the more intensively developed districts in and around the village area. It is intended that high quality neighborhoods with a greater density and greater mix of uses than would be permitted in the R-1 residential district shall be accommodated.
- (B) Permitted Uses. Uses permitted by right are listed in the **Table of Permitted Uses**.

**2.10 R-3 DISTRICT.**

- (A) Purpose. The purpose of this district shall be to provide for an area of transition between the low-density R-1 residential district and the more intensively developed districts in and around the village area. It is intended that quality neighborhoods with a greater density and greater mix of uses than would be permitted in the R-1 residential district shall be accommodated. This district permits multi-family residential use, and is located in two areas with high concentrations of existing multi-family residential structures.

- (B) Permitted Uses. Uses permitted by right are listed in the **Table of Permitted Uses**.

## **2.10 R-4 DISTRICT.**

- (A) Purpose. This district accommodates the high-density residential neighborhood immediately adjacent to the village area. Because of the generally small lot sizes and steep, narrow roads serving these areas, the mix of uses is strongly controlled. High density is still permitted because it predominates the existing land use pattern.
- (B) Permitted Uses. Uses permitted by right are listed in the **Table of Permitted Uses**.

## **Table of Permitted Uses**

### **SECTION 3.00: DIMENSIONAL REQUIREMENTS.**

**3.01 ROAD FRONTAGE.** All new lots are required to meet the road frontage requirements of this section.

- (A) Purpose. Road frontage requirements address several policy issues. First, frontage is required to ensure safe access to each property by the property owner, emergency service vehicles, delivery vehicles, and guests. Second, longer frontage requirements can be one component of a system to help protect the capacity of arterial roads by reducing the number of lots along that road, thus reducing the number of curb cuts and resulting traffic conflict points. This contributes to the goal of lessening vehicle congestion in the streets. Third, frontage requirements affect the spacing of buildings, thus impacting neighborhood character, ensuring adequate sunlight and air circulation, preventing overcrowding of land and undue concentration of population, and securing safety from fires and other dangers.
- (B) All lots shall front on:
  - (1) a State or town road with a classification of Class I, II or V, as defined in RSA 229:5;
  - (2) a private road, either: constructed to town standards as required by the Subdivision Regulations of the Planning Board at the time the lots were created; or for which adequate financial security has been posted to ensure proper construction; or
  - (3) a Class VI road proposed to be improved to current Town standards, and for which adequate financial security has been posted with the Town to ensure completion of the improvements.
- (C) Length of Frontage. The minimum length of frontage in each district is specified in the **Dimensions Table**.
- (D) Open Space Design. The Open Space Design section of this Ordinance permits reduction of certain road frontage standards.

**3.02 LOT SIZE.** All new lots are required to meet the lot size requirements of this section.

- (A) Purpose. Lot size requirements are an important component in addressing many of the general purposes of this Ordinance, including lessening vehicle congestion in the streets, securing safety from fires and other dangers, providing adequate sunlight and air circulation, preventing overcrowding of land and avoiding undue concentration of population, enhancing pedestrian travel, contributing to community character and quality neighborhoods.
- (B) Minimum Lot Size. The minimum lot size in each district is specified in the **Dimensions Table**. Note additional requirements in § 5.01, § 5.03, and § 5.05.
- (C) Open Space Design. The Open Space Design section of this Ordinance permits reduction of certain lot size standards.

**3.03 RESIDENTIAL DENSITY.** Residential density shall not exceed the requirements of this section. Residential density is measured by the number of residential units per acre.

- (A) Purpose. Control of residential density is an important component in addressing many of the general purposes of this Ordinance, including lessening vehicle congestion in the streets, preventing overcrowding of land, avoiding undue concentration of population, facilitating adequate provision of public facilities, utilities and services, assuring proper use of natural resources, and contributing to community character and quality neighborhoods.
- (B) Maximum Residential Density. The maximum residential density in each district is specified in the **Dimensions Table**.
- (C) Open Space Design. The Open Space Design section of this Ordinance does not permit an increase of residential density. The standards for residential density shall apply regardless of the pattern of development.

**3.04 SETBACKS.** Structures shall be set back from property lines in conformance with the minimum and maximum setback requirements set forth in this section.

- (A) Purpose. Control of setbacks is important for a variety of reasons. The proximity of a structure to a road affects the character of the neighborhood, encourages or discourages pedestrian activity, and may block site distance for cars at an intersection or driveway. The proximity of a structure to abutting lots affects fire safety, the provision of adequate sunlight and air circulation for this and neighboring lots and structures, and the availability of space for site amenities such as landscaping, driveways and so forth.

In this Ordinance, maximum setbacks are required in certain instances. While the minimum is applied in most communities, the maximum setback is still unusual and warrants further explanation. The maximum setback is applied in the village area, where it is highly desirable to site the buildings close to the sidewalks and streets. The resulting built environment provides for a visually consistent streetscape, and enhances the pedestrian character of the village by forcing the buildings to be close to the sidewalks and preventing on-site parking in front of the buildings.

- (B) **Structure Setbacks.** Minimum and maximum setbacks from roads and other property boundaries are specified in the **Dimensions Table**. Maximum setbacks shall not apply to accessory structures.
- (C) **Open Space Design.** The Open Space Design section of this Ordinance may permit reduction of certain setback standards.
- (D) **Special Exceptions.**
  - (1) The ZBA can relax the maximum setback in the M-2 District to a maximum of 25' by granting a Special Exception when the following condition is met:
    - (a) the area within the front setback will be used for outdoor restaurant seating, retail display, or other active use associated with the permitted use. In no case shall parking be permitted within the front setback.
  - (2) In cases where the setback requirements have changed since a subdivision was approved, and where the current requirements are more restrictive than those in effect at the time of the subdivision approval, the ZBA may reduce the current setback requirement to that permitted at the time of the subdivision approval by granting of a Special Exception. The ZBA shall grant a Special Exception when the following conditions are met:
    - (a) application of the current setback standards would render the lot unbuildable; or
    - (b) the ZBA determines that the former setback requirements are sufficient to secure the purposes of this Section.

**3.05 STRUCTURE HEIGHT.** Structure heights shall not be less than the minimum nor more than the maximum requirements set forth in this section.

- (A) Purpose. Control of structure height is important for a variety of reasons. Structure height is related to fire safety and the fire department's ability to protect public safety. However, there are other important issues beyond the immediate safety issue. Structure height strongly affects the character of the neighborhood and the allowance of adequate sunlight and air circulation. It is a critical control of intensity of use, especially for non-residential uses. In this Ordinance, both minimum and maximum structure heights are required in certain instances. While the maximum is applied in many communities, the minimum requirement is unusual and warrants further explanation. The minimum height requirement is applied in the M-2 District, where it is highly desirable to maintain a relatively consistent visual facade of tall buildings along the village streets. Most buildings will have multiple stories, providing lower rent commercial or residential space over the more desirable street level space. Other buildings, especially those which serve a civic function such as churches, are suitably tall even without the multiple stories, so there is no restriction on the number of stories.
- (B) Structure Height. Both minimum and maximum structure heights are specified in the **Dimensions Table**. Maximum structure height shall apply to all structures, but minimum structure height shall apply only to primary structures and not to accessory structures.
- (C) Open Space Design. The Open Space Design section of this Ordinance does not permit alteration of structure height requirements. The standards for structure height shall apply regardless of the pattern of development.
- (D) Special Exception. The ZBA can relax the maximum structure height limit to a maximum of 60' by granting a Special Exception when the following conditions are met:
- (1) the proposed structure, which exceeds the height limit, must exceed the height limit to fulfill its unique purpose, such as an agricultural silo, church steeple, or a communications antenna.
  - (2) there shall be no occupied floor space above the standard height limit.



## **Dimensions Table**

**SECTION 4.00: SIGNS.** (editorial note: amended May 7<sup>th</sup>, 2003)

**4.01 PURPOSE.** Consistent with the overall purpose of this Ordinance, it is the Town's intent to require signs, which enhance the character of the community and protect its visual environment. Businesses need identification and the public needs direction, so the Town must balance these needs with the protection of community. Excessive signs shall be prevented. Sizes, materials, mounting locations and other such factors shall be consistent with the public objectives in the area in which a sign is located. Signs shall be readable and clear, and properly maintained. Signs shall not cause safety problems.

**4.02 APPLICATION PROCESS.** Except as listed below, all new signs or modifications to signs shall require a permit from the Code Enforcement Officer. A written application and a \$25 fee shall be submitted to the Town. The request shall have sufficient information to determine compliance with these requirements, and shall include drawings.

- (A) Exempt Signs. The following signs do not require a sign permit from the Town, and are not subject to the setback requirements:
- (1) sign with a message area of one square foot or less, which bears only property numbers, post office box numbers, names of occupants, other non-commercial identification, or with a message of the following type: "open", "closed", "now hiring", "vacancy", "no vacancy", etc.
  - (2) directional sign, with no commercial message, indicating entrance and/or exit to a site, with a message area of two square feet or less.
  - (3) legal notice, such as "no trespassing" signs, with a message area of two square feet or less.
  - (4) business name and/or directional sign with a message area of three square feet or less which are located over doorways.
  - (5) government or religious flags.
  - (6) window sign, unless a neon sign per 4.04(B).
  - (7) sign identifying lawn, garage or barn sales, with a message area of six square feet or less, and displayed not more than one day prior to the event and removed not more than one day following the end of the event.
  - (8) sign for a government election, with time limits as specified in State law, or if no State law applies, then erected no more than 45 days prior to the election and removed within 10 days following the election, except for

primaries where the winners signs may remain until 10 days after the final election (see RSA Chapter 664 for further information).

- (9) real estate sign for the sale or lease of the property on which the sign is located, with total message area not to exceed the permitted message area for other freestanding signs on the property. Real estate signs, being temporary, shall be permitted in addition to other permitted signs. Off-site real estate signs shall be limited to directional signs, with a maximum message area of two square feet, indicating directions to properties for sale and/or open houses. If located in a right-of-way, permission from the owner of the road shall be required.
  - (10) promotional sign for public or institutional events, as authorized by the Town Council.
  - (11) directional sign to help locate facilities for disabled persons, with the message area not to exceed four square feet, as required for compliance with the Americans with Disabilities Act of 1990.
  - (12) announcement board, with a message area not to exceed 12 square feet, on the property of the Town, school, public service organization, or religious institution, because such activities are vital to the civic function of these properties.
  - (13) for construction in progress, one or more signs per lot with a total combined message area not to exceed 24 square feet, identifying the owner, architect, contractors, and/or developer, to be removed within one month of the completion of the project.
  - (14) sign for fraternal or social clubs, local service agencies and philanthropic organizations, which identifies meeting times and locations, with a message area of three square feet or less.
  - (15) awnings with messages, as permitted in 2.02(C)(4) in the M-2 District.
  - (16) One directional sign may be placed in the right-of-way at the entrance to a subdivision. The message area shall not exceed 12 square feet, and sign height shall not exceed 6'.
- (B) Permitted Maintenance. No permit shall be required for normal maintenance, which shall include repainting and other surface renewal.

**4.03 SIGN CONTENT.** The Town has no intention of restricting individual free speech, but the Town does recognize its right to place reasonable restrictions upon commercial

speech. Further, the Town wishes to prevent excessive or unnecessary signs along road corridors. In keeping with this reasoning, off-site commercial signs shall be prohibited. The Town, however, may develop and install a standardized system of municipally owned business directional signs, similar to the State system, to better index the community for people.

#### **4.04 GENERAL DESIGN STANDARDS.**

(A) Illumination.

- (1) Each light source shall be located, directed and/or shielded such that it is not visible at any point along the property boundary, nor from any right-of-way or neighboring property; and
- (2) Internal illumination of signs is permitted in all district except the M-2 District. The method of internal illumination shall be limited to the following techniques:
  - (a) backlighting of non-translucent letters, characters and/or symbols surface mounted on a non-translucent background.
  - (b) for signs with a translucent message face and an internal light source, letters, characters and/or symbols shall be light colored against a darker colored background.

(B) Neon. One neon window sign shall be permitted in each business in the M-2 District. Message area shall not exceed four square feet. Neon signs shall be prohibited in all other districts.

(C) Motion. Moving signs, or signs which give the appearance of motion, shall be prohibited.

(D) Flashing/Blinking. Flashing, blinking, alternating type, or digital type lighting shall be prohibited, except that alternating time/temperature signs shall be permitted as part of the freestanding or wall sign.

(E) Materials. Except for the sign face of a permitted, internally illuminated sign, the use of plastic shall be minimized on the exterior of signs and their supporting structures. Stone, brick, wrought iron, wood and other materials, which are more traditional building materials in the region, should be used to the maximum extent feasible.

(F) Signs shall not project over a public street, but projecting signs as permitted herein may project over Town sidewalks, and over other sidewalks with the

sidewalk owner's consent. A minimum of eight feet of clearance underneath shall be provided.

- (G) Signs shall not be placed in such a position as to endanger vehicular, bicycle or pedestrian traffic by obstructing a clear view, by causing confusion with governmental signs and signals, or by any other means.
- (H) Movable Signs. Movable signs shall be prohibited. No vehicle, including parts thereof, trailers, and other accessories, shall be used as a means of circumventing the purpose and intent of this Ordinance. However, a vehicle displaying a commercial message which is licensed, registered and inspected shall be exempt from these sign regulations if it is regularly and customarily used to transport people or property for the business.
- (I) Signs, other than neon signs where permitted, in which light source(s) creates the message shall be prohibited.
- (J) The following shall be allowed for one week per calendar year by permit from the Code Enforcement Officer: search lights; balloons or other gas-filled figures; and banners and/or pennants.

**4.05 REGULATIONS BY DISTRICT.** Specific restrictions regarding the type, message area, height, setback, and illumination are as follows:

- (A) Freestanding Signs. One freestanding sign per lot shall be permitted in all districts as follows:
  - (1) Setback. All freestanding signs shall be set back a minimum of 5' from the property boundary.

- (2) Sign Height and Message Area. Maximum sign height and message area shall be limited as follows:

Zoning District	Maximum Sign Height (ft.)	Maximum Message Area (sq. ft.)
M-1	12	24
M-2	12	24
M-3	8	24
M-4	12	32
B-1	12	32
B-2	12	32
B-3	8	32
R-1	8	12
R-2	8	12
R-3	8	12
R-4	8	12

- (3) In the M-1, M-2, and B-1 districts, a projecting sign may be substituted for a freestanding sign. The message area shall not exceed 24 square feet, and no part of the sign or its supporting mechanisms shall extend above the top of the wall to which the sign is attached.
- (4) In the B-3 district signs must be made of wood or other natural materials and shall not be internally lit. Any lighting shall be directed from above and shall be installed and maintained so that no light is directed onto roadways or abutting properties.

(B) Wall Signs.

- (1) Districts. In addition to freestanding signs, wall signs shall be permitted on primary buildings in the following districts: M-1; M-2; M-3; M-4; B-1; B-2; and B-3. In all other districts, wall signs shall be permitted only as an alternative to a freestanding sign.

- (2) Height. The top of the wall sign shall not extend above the top of the wall to which it is attached.
- (3) Number of Wall Signs. Not more than one wall sign shall be permitted per lot, except for: a lot with multiple businesses, in which case each business shall be permitted its own wall sign; or a lot adjoining two or more streets, in which case a wall sign facing each street shall be permitted.
- (4) Message Area. The message area of a wall sign shall not exceed 10% of the area of the wall to which it is attached. Where the wall may include two or more off-set sections parallel to one another, the area of the wall shall include the area of all the sections parallel to and facing the same direction as that portion of wall to which the sign is attached. Where multiple wall signs are permitted, the sum of the message areas shall not exceed 10% of the area of the front wall of the primary structure on that lot.

**4.06 SIGNS IN PLATTED RIGHT OF WAY.** Except as otherwise provided herein, no sign shall be permitted within any platted right-of-way.

**4.07 MAINTENANCE.** All surfaces and supporting structures of signs, whether erected prior to the effective date of this Ordinance or not, shall be maintained in a safe and sightly condition to the satisfaction of the Code Enforcement Officer.

**4.08 NON-CONFORMING SIGNS.** Signs lawfully in existence before the adoption of regulations, which make them non-conforming, shall be permitted to continue in existence and be maintained. No change in type, size of message area and/or support structure, height, location, message, illumination, number, or material shall be permitted without application to and approval from the Town. Non-conforming aspects of the sign may continue, but no additional types of non-conformity shall be created by any change. Permitted changes may allow reduction in any one or more non-conforming aspects, but shall not allow any non-conforming aspect of the sign to become increasingly non-conforming. If a non-conforming sign is abandoned, the grandfathered rights shall terminate and any replacement shall comply with the requirements of this chapter.

## **SECTION 5.00: OVERLAY ZONING DISTRICTS.**

### **5.01 AQUIFER PROTECTION OVERLAY DISTRICT.** (editorial note-Amended 03/06/02)

#### **(A) AUTHORITY AND PURPOSE**

Pursuant to RSA 674:16-21, the Town of Newmarket adopts an Aquifer Protection District and accompanying regulations in order to protect, preserve and maintain existing and potential groundwater supplies and related groundwater recharge areas within the Town. The objectives of the Aquifer Protection District are:

To protect the public health and general welfare of the citizens of Newmarket.

To prevent development and land use practices that would increase risk of contamination or reduce the recharge of identified aquifers.

To provide for future growth and development of the Town, in accordance with the Master Plan, by insuring the future availability of public and private water supplies.

To encourage uses that can appropriately and safely be located in the aquifer recharge areas.

To incorporate by reference and encourage implementation of the recommendations and findings of the recently completed report by Dufresne-Henry entitled Delineation of Wellhead Protection Area: Newmarket Plains Aquifer, December – 1999 in order to protect the existing and future viability of the Town of Newmarket's primary water supply.

#### **(B) DEFINITIONS**

For the purpose of this article, the following terms shall have the meaning given herein:

- (1) Aquifer: A geologic formation, group of formations, or part of a formation that is capable of yielding quantities of groundwater usable for municipal or private water supplies
- (2) Groundwater: All the water below the land surface in the zone of saturation or in rock fractures capable of yielding water to a well.
- (3) Groundwater Recharge: The infiltration of precipitation through surface soil materials into groundwater. Recharge may also occur from surface waters, including lakes, streams and wetlands.



- (4) Impervious surface-protective: a surface through which regulated substances cannot pass when spilled. Impervious surfaces-protective include concrete unless unsealed cracks or holes are present. Asphalt; earthen, wooden or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces-protective.
- (5) Leachable Wastes: Waste materials, including but not limited to solid wastes, sewage sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment, and specifically excluding wastes from functional, approved residential septic systems.
- (6) Mining of Land: The removal of geologic materials for the purpose of extracting topsoil, sand and gravel, metallic ores or bedrock and excavation as defined in RSA 155-E and Newmarket Excavation Regulations.
- (7) Seasonal high water table (SHWT): This term refers to the upper limit of the ground water in a soil that becomes seasonally saturated with water.
- (8) Toxic or Hazardous Materials or Regulated substance: petroleum, petroleum products, and substances listed under 40 CFR 302 7-1-90 edition, excluding propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure.
- (9) Wellhead Protection Area: Defined as found in RSA § 485-C:2(XVIII), as amended.

(C) DISTRICT BOUNDARIES

- (1) Location.
  - (a) The Aquifer Protection District shall include all land identified as stratified drift aquifer (of any kind) in the vicinity of Newmarket Plains (along NH Route 152, Lee Hook Road, Langs Lane, and Ash Swamp Road) on Plate 6 of the report entitled Geohydrology and Water Quality of Stratified Drift Aquifers in the Exeter, Lamprey, and Oyster River Basins, Southeastern New Hampshire (USGS, Water Resources Investigations Report 88-4128, 1990 revised).
  - (b) The Wellhead Protection Area is designated by the map: Wellhead Protection Area – Plains Aquifer in Figure 4-11 of the report entitled: Delineation of Wellhead Protection Area: Newmarket Plains Aquifer, December – 1999 (Dufresne-Henry) incorporated herein by reference.

- (2) The Aquifer Protection District is a zoning overlay district, which imposes additional requirements and restrictions to those of the underlying district. In all cases, the more restrictive requirements shall apply.
- (3) Appeals. When the actual boundary of the Aquifer Protection District is in dispute by any landowner or abutter actually affected by said boundary, the Planning Board, at the landowner's/abutter's expense and request, may engage a professional geologist or hydrogeologist to prepare a report addressing the location and extent of the aquifer and recharge area relative to the property in question. This report shall include but not be limited to the following:
  - (a) A two-foot interval topographic layout prepared by a registered land surveyor of the subdivision and/or area to be developed;
  - (b) A high intensity soils map of the subdivision and/or area to be developed prepared by a soils scientist qualified in hydrologic studies including a written report of his/her on-site field inspection and test boring data;
  - (c) The Aquifer Protection District boundary shall be overlaid on the plat and the newly proposed boundary location shall be indicated on the same plat by a broken line;
  - (d) Evidence derived from a pumping test(s) or a sufficient number of test borings, test pits, observation wells and groundwater elevations to clearly demonstrate that the area in question does not meet the definition of aquifer or recharge area; and
  - (e) Where the area in question is Wellhead Protection Area, evidence shall also comply with guidelines published by the New Hampshire Department of Environmental Services for Phase II delineations of public water systems in order to determine the contribution zone of any portion of a municipal water supply that lies beneath the subject parcel.

Any additional mapping, hydrogeologic reports or information which becomes available as a result of recent or on-going scientific investigations of the locations and extent of aquifers performed by the U. S. Geological Survey, New Hampshire State agencies or boards, the Town of Newmarket or agents of any of the above.

- (4) The Planning Board may, based upon any findings or reports submitted under this section, adjust the boundary or area designation of the Aquifer Protection District to more correctly define the aquifer(s) and recharge area(s) on a site-specific, case-by-case basis.

(D) USE REGULATIONS – AQUIFER PROTECTION DISTRICT

- (1) Minimum Lot Size. The minimum lot size shall be governed by the dimensional controls outlined in the applicable zoning district. In all cases standard lot size shall be at least 2 acres. The minimum lot size within the Wellhead Protection Area shall be at least 3 acres. Open Space Subdivisions are encouraged in the Aquifer Protection District, provided septic systems are designed to minimize potential contamination to groundwater, to the maximum extent possible. Land areas within the Aquifer Protection District shall be calculated as providing 1 unit of density per 2 acres; land within the Wellhead Protection Area shall provide a density calculation of 1 unit per 3 acres.
- (2) Maximum Lot Coverage. Within the Aquifer Protection District, for any use that will render impervious more than 10% or more than 2,500 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which the planning board, and Town Engineer, if necessary, determines is consistent with Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, Rockingham County Conservation District, August 1992 (as amended) and Best Management Practices for Urban Stormwater Runoff, NH DES, January 1996 (as amended).
- (3) Site Drainage. At the discretion of the Planning Board, the design and the construction of any drainage facility shall be approved by the Public Works Department, and/or designated Town Engineer. Drainage facilities shall be designed in accordance with best management practices as described in Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire. All stormwater treatment and drainage facilities within the Wellhead Protection Area shall be cleaned/serviced and inspected at least once per year as a minimum, in accordance with design specifications. For all non-residential uses the Planning Board shall be authorized to require monitoring wells to insure water quality standards.
- (4) Use of Deicing Chemicals. There shall be minimal use of deicing chemicals on all public and private roads and parking lots within the District. The use of these chemicals shall be free of sodium and chloride to the greatest extent possible.
- (5) Prohibited Uses. In addition to all other uses not permitted in the underlying district, the following uses shall not be permitted in the Aquifer Protection District overlay district except where permitted to continue as a nonconforming use. Such activities, however, in the Wellhead Protection Area shall be prohibited from any further expansion as a matter of water quality protection and health and safety:

- (a) Disposal, storage, and staging of all solid waste, construction materials, vegetative debris, sludge, biosolids, and stumps, except as part of the process of improving the subject parcel, provided no such waste is buried on the site.
- (b) All disposal, discharge, processing or recycling of hazardous materials. Regulated substances shall be handled in accordance with NH Code of Administrative Rules Part Env-Ws 421.
- (c) Disposal of non-sanitary liquid or leachable wastes from all residential, commercial or industrial uses. Residential septic systems are exempt from this prohibition pursuant to Section B(5).
- (d) Subsurface storage of petroleum and other refined petroleum products. The placement of residential tanks underground for the storage of petroleum and other refined petroleum products shall not be allowed in new construction in the Wellhead Protection Area. Propane fuel or other non-liquid fuel supplies shall be used and may be stored underground.
- (e) Outdoor unenclosed or uncovered storage of road salt and other deicing chemicals.
- (f) Dumping of snow containing deicing chemicals brought from outside of the Aquifer Protection District.
- (g) Commercial animal feedlots where animals are kept.
- (h) Automotive service and repair shops, junk and salvage yards.
- (i) Injection wells that dispose of waste in the ground.
- (j) Within the Wellhead Protection Area, the establishment of a new excavation site is prohibited unless it is incidental to a permitted use and with the exception of any existing excavation legally permitted under the excavation regulations of the Town of Newmarket at the time of adoption of this ordinance. (See § (7), below).
- (k) The commercial storage of fertilizers, animal manure and compost unless in accordance with the Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets and Food, August 1998, and subsequent revisions, and for an agricultural use already in existence at the time of this ordinance. Normal residential uses are exempt from this prohibition.

- (l) Any groundwater withdrawal well extracting water for non-residential purposes in excess of 57,000 gallons per day.
- (6) Permitted Uses. The following uses are permitted provided they are conducted in accordance with the purposes and intent of this Article:
  - (a) All uses permitted in the underlying zone, provided that all such uses requiring a septic system are reviewed by the Town Engineer for compliance with applicable rules, laws, and best management practices.
  - (b) Maintenance, repair of any existing structure in conformance with the regulations of this Article.
  - (c) The expansion of a nonconforming use as long as it complies with the Nonconforming Use section of this Article and § 1.05 Non-conformity of the Newmarket Zoning Ordinance, provided however that such expansion presents no tangible increased risk of contamination or quantity reduction to the groundwater at the site. If such use is determined to be an imminent hazard to public health and safety by the Town Council or the Health Officer it may not expand or be changed unless to a conforming use.
  - (d) Farming, gardening, nursery, forestry, harvesting, residential composting, grazing and recreational uses provided that fertilizers, pesticides and other management practices are deemed safe by the Rockingham County Conservation District. These uses of land in the Aquifer Protection District must not cause a tangible increased risk of contamination or decreased quantity to the aquifer as determined by the Town of Newmarket and its consultants.
  - (e) Municipal uses, such as the town garage, schools, and such other uses as the Town deems appropriate provided reasonable efforts are made to protect and preserve the quality and quantity of groundwater in the Aquifer Protection District.
  - (f) Commercial uses permitted in the underlying zone that are not water-dependant. Water withdrawals shall be permitted for the purposes of on-site irrigation and for providing potable water for on-site employees but not for manufacturing or industrial processes. Wells shall also be permitted for groundwater monitoring and sampling.
    - (i) Any groundwater withdrawal well extracting water for non-residential purposes for a total of less than 57,000 gallons per day may be approved only upon a determination that no impact upon the Newmarket water supply will result.

(7) Nonconforming earth, sand, and gravel excavations

- (a) Sand and gravel excavations that are in existence at the time of the adoption of this article may continue provided they are in full compliance with all governing local and state regulations. Upon expiration of previously approved excavation permits, all sand and gravel excavations within the Aquifer Protection District shall apply for a conditional use permit granted by the Planning Board in accordance with the procedural process as found in the excavation regulations based on the required submission of the following:
  - (i) Submission of quarterly reports on depth of excavation, spills, and timetable for excavation and reclamation.
  - (ii) A development agreement requiring incremental reclamation and other conditions for an exception to the minimum distance requirement.
- (b) Any sand and gravel excavation within the boundaries of the Aquifer Protection District that is no longer in operation or is considered to be an abandoned use shall be reclaimed within one calendar year of the adoption of this ordinance or within one calendar year of the date of abandonment, whichever is later.
- (c) Any sand and gravel excavation within the boundaries of the Aquifer Protection District that is operated by the Town of Newmarket for the purpose of providing sand or gravel utilized by the Public Works Department shall be exempt from the requirements for a conditional use permit, however, no excavation activity shall occur below the SHWT.
- (d) At no time shall excavations occur below 4 feet above the SHWT. Compliance with the above shall be determined by the submission of an annual report showing the SHWT as established by test pits (2 per acre of excavation area distributed evenly throughout the excavation area) and witnessed by a licensed New Hampshire Soil Scientist.
- (e) All refueling and vehicle maintenance shall be done, to the extent practical outside of the Aquifer Protection Area, if done within the Aquifer Protection Area, such activity shall be completed on an impervious surface-protective or other facility, to be approved by the Town Engineer, that mitigates the spread of any unforeseen spill.

(E) HYDROGEOLOGIC STUDY

- (1) Within the Aquifer Protection District, a hydrogeologic study shall be required for developments involving the disturbance of more than 50,000 square feet on the same parcel within a period of 5 years. No further development will be permitted unless a full study has been completed for the entire development potential of the parent parcel in accordance with the regulations in effect at the time. Hydrogeologic studies shall be performed by a professional hydrogeologist. These studies shall be sufficiently detailed to evaluate the development's impacts to groundwater within the parcel to be developed and the surrounding land.
- (2) For any proposed groundwater withdrawal associated with a subdivision containing 4 or more houses, or as found in § (E)(1), with individual supply wells or a centralized community supply well or for any other groundwater withdrawal in excess of 1,500 gallons per day for the development, a hydrogeologic study must be conducted at the expense of the developer, owner, or applicant. The study shall be performed by a Professional Geologist or equivalently qualified hydrogeologist. The study shall evaluate the effects of the proposed withdrawal on the long-term water levels, groundwater flow direction, the limits of the Wellhead Protection Area for Newmarket's municipal wells and assess the availability of groundwater for a future municipal or smaller community supply well. The study shall evaluate both the short-term and the cumulative affects of this withdrawal with other existing and reasonably expected future withdrawals within the aquifer (ie. the Town's withdrawal in addition to all other current or approved withdrawals). The Planning Board may refer to the NH DES requirements for Site Selection of Small Production Wells for Community Water Systems, Env-Ws 378, as amended, for guidance on study design.

(F) DESIGN AND PERFORMANCE STANDARDS

- (1) Where portions of a site are partially located outside of the Aquifer Protection overlay zone, potential pollution sources such as on-site waste disposal systems and impervious surfaces should be located outside and down gradient of the Zone to the extent feasible.
- (2) Any change of use for a site shall require Site Plan Review. The Planning Board shall be authorized to require additional measures to insure adequate groundwater protection.
- (3) The provisions of this ordinance are minimum requirements, any Town Board or Official who has jurisdiction over any activity or permit within the boundaries of this ordinance may impose additional criteria to achieve the goals and objectives of this ordinance.

- (4) All activities, uses and construction shall be undertaken in such a manner so as to protect Newmarket's aquifers.

## **5.02 SHORELINE PROTECTION OVERLAY DISTRICT.**

- (A) Purpose. The waters of Great Bay, the Lamprey River, and other surface waters contribute greatly to the heritage and unique qualities of the Town of Newmarket, especially in the downtown waterfront area. It is the Town's intent to conserve these resources, and to ensure that adjacent land uses compliment the water resources. This shall serve to prevent degradation of the water resources, protect ecological integrity, reduce pollution, protect the quality of life, protect and enhance natural beauty, and foster tourism. This is consistent with the general purpose of this Ordinance, the policies of the Newmarket Master Plan, and the State Comprehensive Shoreline Protection Act.
- (B) Overlay District Boundaries. The Shoreline Protection Overlay District shall include all land within 125' of Great Bay, the Lamprey River, the Piscassic River and Follett's Brook. Measurements shall be taken from the "reference line" as defined in RSA 483-B:4,XVII.
- (C) State Shoreland Protection Act. RSA 483-B is a State law, which applies to the land areas within 250' of public waters. In Newmarket, public waters are covered by this Act include all tidal waters and the non-tidal portion of the Lamprey River. Public waters, as defined in this RSA 483-B, includes all tidal waters, fresh water bodies listed pursuant to RSA 271:20,II, and rivers of fourth order or higher. Per RSA 483-B:20, rivers designated under RSA 483 prior to January 1, 1993 are exempt from this Act. The Lamprey River in the towns of Durham and Lee were designated in 1990, but the portion in Newmarket has not been designated and is therefore subject to the Comprehensive Shoreland Protection Act. The list of fresh water bodies developed pursuant to RSA 271:20,II includes only one listing in Newmarket, that being the Lamprey River impoundment above the McCallem Dam. All land covered by the Shoreland Protection Act shall be regulated by the Act unless otherwise modified by this Section and/or if the area is exempted from the Act per application under RSA 483-B:12.
- (D) General Requirements. The following shall apply throughout this Overlay District:
  - (1) Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs, and ground covers and their living, undamaged root systems shall be left in place.



No tree shall be cut without a written permit from the Code Enforcement Officer.

- (2) Landowners shall be allowed use of shoreland frontage sufficient for developing one access point to the waters not exceeding 20% of the water frontage for a boat ramp, dock or other facility.
- (3) Any disturbed area within the district shall be re-vegetated as quickly as possible to ensure stabilization of the site. Interim erosion and sediment control measures shall be required to prevent damage to the waters and shoreline.
- (4) Structure Setbacks:
  - (a) In the M-1 District, there shall be no minimum structure setback from the shoreline.
  - (b) In the M-2 District, the structure setback from the shoreline shall be 50', except that this setback shall not apply to marinas and their accessory structures.
  - (c) all other base districts, no structure shall be permitted in this Overlay District except for structures required for the legitimate use of the waters. Such structures shall have no toilet facilities and shall not be used for habitation.
- (5) Shoreline Frontage:
  - (a) In the M-1 and M-2 districts, there shall be no minimum requirement for shoreline frontage per lot.
  - (b) In all other base districts, there shall be a minimum of 150' of shoreline frontage per lot. Additionally, for duplex or multifamily development, there shall be a minimum of 150' of shoreline frontage per unit located within this overlay district.

**5.03 WETLAND PROTECTION OVERLAY DISTRICT.** (Amended: February 4, 2004)

- (A) Purpose. Wetlands are a critical natural resource that affect water quality, flooding, wildlife, recreation, and aesthetics, and their protection is a goal of the Master Plan. Wetlands protect surface water quality by reducing the speed of surface water runoff, allowing for the deposit of sediment and nutrients. Wetlands protect shorelines from erosion. Wetlands absorb water during times of flooding, thus helping to reduce floodwater elevations. Wetlands help to maintain

the quality of groundwater recharge. Wetlands provide habitat for a wide variety of wildlife, including fish, birds, deer other animals. Wetlands contribute to a broad range of recreational opportunities, including canoeing, hunting, fishing and bird watching. Wetlands contribute to the aesthetic values of the Town, providing for open space, natural vistas, landform contrasts, and early autumn foliage. These purposes, in combination with the fact that wetlands are often ill suited to development activities, demonstrate why the long-term protection of wetlands contributes greatly to the welfare of the community.

- (B) The Wetland Protection Overlay District is enacted to implement the recommendations of the Town of Newmarket Master Plan. The provisions of this environmental characteristic zoning ordinance and the special permit process are adopted in accordance with RSA 674:21. Additional sources considered during the drafting of this ordinance include *Buffers for Wetlands and Surface Waters* (rev. 1997) and *The New Hampshire Estuaries Project Management Plan* (2000).
- (C) Overlay District Boundaries. The Wetlands Protection Overlay District shall include all areas of land that meet the criteria of the NH DES wetlands bureau rules for determination of wetlands, poorly drained and very poorly drained soils (as amended), prime wetlands, as delineated by the Newmarket Conservation Commission and approved in accordance with RSA 482-A:15 (as amended) and associated buffers, as defined in this ordinance. (Changes in prime wetland designation require this section to be re-adopted in order for these provisions to apply to the new areas.) (Latest adoption version: Newmarket Prime Wetland Designation Study, West Environmental Inc. report dated: January 28<sup>th</sup>, 2003)
  - (1) The location of a wetland boundary in any particular case must be determined by on-site inspection. Determination of jurisdictional wetlands shall be performed by a NH certified soils or wetlands scientist in accordance with NH DES rules.
  - (2) Prime Wetlands and associated buffers. Prime wetlands shall not be included in the minimum lot size or as part of any lot density calculation as required by any part of this ordinance. There shall be no disturbance of any kind (including but not limited to construction, filling, dredging and the removal of vegetation) within a prime wetland or within a buffer area within 75' around the prime wetland. Structures shall be set back a minimum of 100' from prime wetlands. On site septic systems shall be set back a minimum of 125' from prime wetlands.
  - (3) Very Poorly Drained Soils (or Hydric A soils if so designated on-site) and associated buffer. Such wetlands shall not be included in the minimum lot size or as part of any lot density calculation as required by any provision of this ordinance. There shall be no disturbance of any kind (including but

not limited to construction, filling, dredging and the removal of vegetation unless in accordance with the provisions of this ordinance) within such wetlands or within a buffer area 50' around such wetlands.

- (4) Poorly Drained Soils (or Hydric B soils if so designated on-site) and associated buffer. Such wetlands may be used to fulfill up to 25% of the area of the minimum lot size or 25% of any lot density requirement as part of any section of this ordinance. There shall be no disturbance of any kind (including but not limited to construction, filling, dredging and the removal of vegetation unless in accordance with the provisions of this ordinance) within such wetlands or within a buffer area 25' around such wetlands.
- (5) If there is reasonable question or dispute as to the boundary of this overlay district, the owner of the property or the Town may hire a qualified soil scientist to examine the area and report all findings to the Town. The cost of such investigation shall be borne by the applicant for the development permit or approval.

(D) General Requirements. The following requirements shall apply within the Wetland Overlay District.

- (1) Agricultural and forestry uses shall be permitted within the Wetland Overlay District provided that such uses are carried out in accordance with Best Management Practices. Forestry uses within Prime Wetlands shall be permitted, provided that tree removal complies with RSA 483-b:9(V)(a) of the Comprehensive Shoreland Protection Act for all areas within the Prime Wetland and associated buffer.
- (2) No surface water withdrawal shall be permitted within the Wetland Overlay District. This section does not cover surface withdrawals for public water supplies or that are necessary for emergency situations (such as to prevent flooding or the spread of pollution or to assist in fire-fighting efforts).
- (3) Where development within the wetland or its buffer is required for access to, and use of, an adjacent surface water, footbridges, catwalks, and/or docks shall be permitted. Such structures shall be constructed on posts or pilings where appropriate so as to permit the unobstructed flow of water, and the natural contour of the wetland shall be preserved. Minor filling for construction of a boat ramp shall be permitted upon obtaining a State Wetlands Permit, and subject to the requirements of the Shoreline Protection Overlay District (§ 5.02 of this Ordinance, as amended).

- (4) Notwithstanding other provisions of this Ordinance, the construction of additions and extensions to single family dwellings shall be permitted within wetland buffers provided that the dwelling lawfully existed prior to the delineation of the wetland area and that the proposed construction conforms to all other applicable codes of the Town.
- (E) Driveway and utility crossings through the Wetland Overlay District may be permitted for the legitimate use of land areas outside of this overlay district. Crossings may be permitted only if granted a Special Use Permit by the Planning Board. The Planning Board may approve, deny or approve with conditions a Special Use Permit upon a determination of compliance with the following criteria:
  - (1) Such dredging, filling or other alteration associated with driveway and/or utility crossings shall be designed to minimize adverse impacts on the wetland, even if this requires adjustments in design outside of this overlay district.
  - (2) Such activity is required for the legitimate use of land areas outside of the overlay district, and there is no reasonable way to eliminate the impact or shift the impact to a wetland of less functional value, and still accommodate the use.
  - (3) Provisions shall be made as a condition of a Special Use Permit to restore the surrounding site to a functional grade, condition and vegetative state in terms of both quality and quantity in order to reduce long-term damage to the site.
  - (4) The proposed crossing impacts less than 6,000 square feet of very poorly drained soils and associated buffer area and 12,000 square feet of poorly drained soils and associated buffer areas.
- (F) Other dredge, fills or impacts for development and any crossing impact in excess of the requirements of 5.03(E)(4)(*above*) may be permitted only if granted a Special Use Permit by the Planning Board. The Planning Board may approve, deny or approve with conditions a Special Use Permit upon a determination of compliance with the following criteria:
  - (1) The wetland is not within 150' of the Great Bay, Lamprey River, Piscassic River or Follet's Brook.
  - (2) The applicant has prepared a mitigation proposal, upon consultation with the Newmarket Conservation Commission, that provides for increased wetland buffers elsewhere on the site that surround a wetland of greater

size or greater functional value than the impacted wetland. Increased buffer areas shall only qualify for this Permit if the horizontal distance or total area of the buffer is doubled. Protected areas shall be noted on a plan filed in the Rockingham County Registry of Deeds and shall be noted as no disturbance/no cut zones on the plan and in the field; or:

- (3) The applicant has provided for the perpetual protection of an area of off-site wetlands of a greater area and equal or higher functional value located in a Open Space Priority Area as denoted in the Newmarket Open Space Conservation Plan in a way that is proportional to the size and functionality of the impacted wetlands (assistance may be in the form of contributions to a Wetland Protection Land Bank if such is created).
- (4) The applicant has provided the Planning Board with written comments on the proposed mitigation proposal from the Conservation Commission.
- (5) Any mitigation proposal submitted to the Board shall attest to the above requirements and shall be completed under the authority and certification of a NH Certified Wetland Scientist using standard-accepted scientific methods.

**5.04 CLASS A WATERSHED PROTECTION OVERLAY DISTRICT** (editorial note-Amended May 7, 2003).

Septic systems shall be set back a minimum of 150' from the reference line of all Class A surface waters. The definition of reference line, pursuant to RSA 483-B:4(XVII)(d), shall be "the ordinary high water mark". Class A surface waters in Newmarket include the Piscassic River and Follett's Brook.

**5.05 STEEP SLOPE PROTECTION OVERLAY DISTRICT.**

- (A) Purpose. The ability of land to accommodate development is related to its slope, among other factors. Steeper slopes are more fragile than flatter slopes, and are far more susceptible to erosion and runoff problems once the earth is disturbed. The Master Plan calls for control of development based on slope, and in particular calls for greatest care on slopes of 25% or more.
- (B) Restrictions. To accomplish the purposes of this Overlay District, the following shall apply to all contiguous areas with a slope of 25% or greater:
  - (1) Construction of new roads through areas with a slope of 25% or greater shall be minimized.

- (2) Slopes of 25% or more shall not be used to fulfill more than 25% of the area of the minimum lot size as required per 3.02.
- (3) Prior to any disturbance of earth, suitable provisions for the prevention of erosion and for the control of runoff shall be made. Such provisions shall be maintained in full working order until the site is again stabilized with vegetation or permanent improvements.

#### **5.06 FLOODPLAIN PROTECTION OVERLAY DISTRICT.**

- (A) Purpose. The purposes of this Overlay District are to: protect floodplains from development and construction activities which would aggravate flooding; prevent development in locations which would place occupants at risk or which would likely require rescue of occupants by emergency services personnel during floods; protect the floodplains for use as habitat and for the aesthetic qualities; and ensure Town compliance with the National Flood Insurance Program.
- (B) Overlay District Boundaries.
  - (1) Study and Map. This ordinance shall apply to all lands designated as special flood hazard areas based on the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Rockingham, N.H." and the associated Flood Insurance Rate Maps (FIRM) dated May 17, 2005 or as amended, which are hereby incorporated into this Ordinance by reference.
  - (2) Boundaries. This Overlay District shall include all areas, which are inundated with water during the 100-year flood (Special Flood Hazard Areas as shown on the FIRM). To determine this boundary, the following order of precedence shall apply:
    - (a) In zone "AE", refer to the elevation data provided in the "Flood Insurance Study for the Town of Newmarket, N.H." and accompanying Flood Insurance Rate Map;
    - (b) In unnumbered "A" zones, reference shall be made to any 100-year flood elevation data available from any Federal, State or other source including data submitted for development proposals to the Town, including Subdivisions and Site Plan Reviews.
- (C) Standards. The following standards shall apply within this Overlay District:

- (1) All proposed development shall require a permit from the Code Enforcement Officer. Such permit shall not be issued until the applicant has provided all other local, State and Federal permits.
- (2) New structures or expansion of existing structures may be constructed within this Overlay District only in the M-1 and M-2 districts.
- (3) All new construction or substantial improvement shall:
  - (a) be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - (b) be constructed with materials resistant to flood damage;
  - (c) be constructed by methods and practices that minimize flood damages;
  - (d) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
  - (e) if residential, have the lowest floor (including basement) elevated to or above the 100-year flood elevation;
  - (f) if non-residential, have the lowest floor (including basement) elevated to or above the 100-year flood elevation, or together with attendant utility and sanitary facilities shall:
    - [1] be flood proofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - [2] have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
    - [3] be certified by a NH licensed Professional Engineer specializing in structural engineering or a NH licensed Architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this Overlay District.

- (g) if the structure has an enclosed area below the lowest floor that is subject to flooding, conform with the following requirements:
  - [1] the enclosed area shall be unfinished or flood resistant, usable solely for vehicle parking, structure access, or storage;
  - [2] the area is not a basement;
  - [3] shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a NH licensed Professional Engineer specializing in structural engineering or a NH licensed Architect, or must meet or exceed the following minimum criteria:
    - [a] a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
    - [b] the bottom of all openings shall be no higher than one foot above grade.
    - [c] openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (4) Manufactured homes, to be substantially improved, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level, and shall be securely anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but shall not be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to any other applicable requirements for anchoring to resist wind forces.
- (5) For all new or substantially improved structures, the applicant shall furnish the following information to the Code Enforcement Officer:
  - (a) the as-built elevation of the lowest floor (including basement) in relation to NGVD, and include whether or not such structure contains a basement;



- (b) if the structure has been flood-proofed, the as-built elevation (in relation to NGVD) to which the structure was flood-proofed; and
  - (c) certification of flood proofing, if required.
- (6) Where new or replacement water or sewer systems (whether municipal, community or on-site) are proposed, these systems shall be designed to minimize or eliminate infiltration of floodwaters into these systems and discharges from these systems into floodwaters. On-site systems shall be located to avoid impairment to them and contamination from them during periods of flooding.
- (7) All recreational vehicles placed on sites shall either:
  - (a) be on the site for fewer than 180 consecutive days;
  - (b) be fully licensed and ready for highway use; or
  - (c) meet all requirements pertaining to the elevation and anchoring of manufactured homes per § 5.06(c)(4).
- (8) In riverine situations:
  - (a) prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the NHDES Wetlands Board and submit copies of such notification to the Code Enforcement Officer, in addition to the copies required by RSA 483-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Code Enforcement Officer, including notice of all scheduled hearings before the Wetlands Board.
  - (b) The applicant shall submit to the Code Enforcement Officer, certification provided by a NH licensed Professional Engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
  - (c) The Code Enforcement Officer shall obtain, review, and reasonably utilize any regulatory floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone “A” meet the following regulatory floodway requirement:

“No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the regulatory floodway that would result in any increase in flood levels within the community during the base flood discharge.”

- (d) Along watercourses that have not had a regulatory floodway designated or determined by a Federal, State or other source, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(D) Variances.

- (1) In the case of an application for variance made to the Zoning Board of Adjustment shall, three additional standards shall apply in addition to the usual five variance standards under State law. The applicant shall have the burden of showing:
  - (a) that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
  - (b) that if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result; and
  - (c) that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (2) The Zoning Board of Adjustment shall notify the applicant in writing that:
  - (a) the issuance of a variance to construct below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
  - (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained as part of the variance application record.

(E) Records. Separate records shall be maintained, and made available for public inspection on request, for all Development Permits and Variances in this Overlay

District. Such records shall include all materials submitted as part of the application, and an explanation of the final decision on such application. The Code Enforcement Officer shall report all variances issued in reports to the FEMA Federal Insurance Administrator upon request, but not more frequently than annually.

- (F) **Supplemental Definitions.** In addition to the definitions provided in 1.11, the Federal Emergency Management Agency (FEMA) requires that additional definitions be included in this ordinance for the Town to remain in the NFIP. The supplemental definitions in this Section shall apply only to this Overlay District, and these shall supersede any other municipal definition in case of conflict in this Section. As used in this Overlay District, the following terms shall have the meanings indicated:

**Base Flood.** The flood having a 1% probability of being equaled or exceeded in any given year.

**Basement.** Any area of a structure having its floor subgrade on all sides.

**Development.** Any man-made change to improved or unimproved real estate, including but not limited to structures, mining, dredging, filling, grading, paving, excavation, or drilling operation.

**Flood or Flooding.** A general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; or the unusual and rapid accumulation or run-off of surface waters from any source.

**Floodplain.** Any land area susceptible to being inundated by water from any source.

**Flood Proofing.** Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

**Historic Structure.** Any structure that is: listed individually in the National Register of Historic Places, or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; individually listed on a State inventory of historic places in a state with an historic preservation program which has been approved by the Secretary

of the Interior; or individually listed on a local inventory of historic places in a community with an historic preservation program that has been certified either (1) by an approved state program as determined by the Secretary of the Interior, or (2) directly by the Secretary of the Interior in a state without an approved program.

**Lowest Floor.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, structure access or storage in an area other than a basement area is not considered a structure's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Overlay District.

**Manufactured Home.** Manufactured housing as defined in 1.11 of this Ordinance, but also including park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days.

**Recreational Vehicle.** This is a vehicle built on a single chassis, with 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently tow-able by a light duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

**Regulatory Floodway.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation. These areas are designated as floodways on the Flood Boundary and Floodway Map.

**Special Flood Hazard Area.** An area having flood, mudslide, and/or flood-related erosion hazards, and shown on an FHBM or FIRM as zone A, A0, A1-A30, AE, A99, AH, V0, V1-30, VE, V, M, or E.

**Structure.** A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**Substantial Damage.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

**Substantial Improvement.** Any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds 50% of the market value of the structure. The market value of the structure equals: the appraised value prior to the start of the initial repair or improvement; or in the case of damage, the value of the structure prior to the

damage occurring. For the purposes of this definition, “substantial improvements” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the structure commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures, which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a historic structure as defined herein, provided that the alteration will not preclude the structure’s continued designation as a historic structure.

#### **5.07 TELECOMMUNICATIONS FACILITY OVERLAY DISTRICT.**

- (A) Purpose. This ordinance is enacted in order to establish general guidelines for the siting of telecommunication towers and antennas and to enhance and fulfill the following goals:
- (1) Preserve the authority of the Town to regulate and to provide for reasonable opportunities for the siting of telecommunication facilities while ensuring that telecommunications provider’s service remains effective and efficient.
  - (2) Reduce or eliminate adverse impacts such facilities may create. Adverse impacts may include, but are not limited to, impacts on aesthetics, impacts on environmentally sensitive areas, impacts to historically significant locations, impacts on flight corridors, reduction in property values, and health and safety concerns.
  - (3) Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future location availability, innovative siting techniques, and siting possibilities beyond the geographic boundaries of the Town.
  - (4) Permit the construction of new towers only where all other reasonable alternatives have been exhausted, and to encourage the owners and users of towers and antennas to configure them in a manner that minimizes visual impacts of said structures.
  - (5) Require antenna co-location on existing tower structures through cooperation and agreements between providers.

- (6) Provide for documentation of scheduling of recurring maintenance and safety inspections for all telecommunications facilities and appurtenances.
  - (7) Provide for the demolition and removal of abandoned facilities. Provide a procedure for the Town to remove abandoned towers to provide for the health and safety of citizens.
  - (8) Provide for the removal or upgrade of technologically outmoded or abandoned facilities.
- (B) Location. Telecommunication Facilities shall be allowed in accordance with the following:
- (1) On parcels situated in and owned by the Town of Newmarket known as:

Map	/Lot	No.General Location	No. Acres
U1	16 96 97	Packers Falls Rd-Folletts Brook	32.0
U2	84 109B	Elm St-Little League Park Beech St Ext near Senior Citizens Hall	4.7 1.28
U4	5	Exeter St-Police/Ambulance Stations	1.0
U5	57	Great Hill - Water tank	0.5
R3	30-47	Lita Ln - Land south of apartments	19.5
R5	9-1	Route 152-Sewall Well	18.93
R6	36 38 39 40 50B 52	Route 152-Town Dump    Route 152-Town Garage	190.0    24.0
U2	281	Simon's Lane - By daycare	1.0
  - (2) As co-location on pre-existing towers, antennas, and alternative tower structures.

- (3) In other areas of Newmarket by Special Use Permit provided written proof be provided to the Planning Board that the use meets the purposes of this overlay district and that an evaluation has taken place showing that the sites listed in Section 5.07 (B)(1) are unavailable or unworkable for a new telecommunications facility or co-location on an existing tower / alternative tower structure.
- (C) Telecommunication Facilities Procedural Requirements. All facilities shall be subject to site plan review, except as exempted in Section 5.07(E) of this regulation.
- (D) Performance Standards.
  - (1) Principal or Secondary Use.

Subject to this ordinance, an applicant who obtains site review approval to site under this ordinance as a secondary and permitted use, may construct telecommunications facilities in addition to the existing principal use. Antennas and towers may be considered either principal or secondary uses. A different existing use or an existing structure shall not preclude the installation of an antenna or tower on a lot. Towers that are constructed, and antennas that are installed in accordance with the provisions of this ordinance, shall not be deemed the expansion of a nonconforming use or structure. Telecommunications facilities shall not be considered an accessory use.

- (2) Height Requirements. The height requirements and limitations outlined above shall preempt all other height regulations as required by the Town of Newmarket Zoning Ordinance, and shall apply only to telecommunications facilities.
  - (a) New Tower Construction - 180 feet maximum, up to 199 feet on towers allowing co-location.
  - (b) Co-location on pre-existing tower - current height plus 15%, not to exceed 200 feet.
  - (c) On existing alternative tower structure - current height plus 40 feet.
- (3) Setbacks and Separation.

The following setbacks and separation requirements shall apply only to telecommunication facilities, and shall supersede all other such standards

found elsewhere in the Ordinance or other applicable Town Ordinances and Regulations.

- (a) Towers shall be set back a distance equal to 150% of the height of the tower from any residential structure not located on the property the tower is sited upon.
- (b) Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind, except legal notice, such as □No Trespassing□ or □Danger□ signs, with a message area of two square feet or less and limited to 10 feet above grade.

- (4) Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owner of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations, within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with this regulation, of the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.
- (5) Certification of Safety Standards and Continued Need. The owner of a tower or antenna shall provide an annual certification to the Code Enforcement Officer verifying compliance with building codes and safety standards. All towers shall comply with applicable building codes and TIA/EIA-222-F standards at all times. The certification shall also verify that the structure is still needed for the operation of the owner's network. Said certification shall be submitted to the Code Enforcement Officer prior to December 31<sup>st</sup> of each year. Failure to submit an Annual Certification shall constitute abandonment and be ground for removal in accordance with Section 5.07 (G).

(E) Exemptions.

- (1) Amateur Radio; Citizen Band Radio; Receive-Only Antennas.

This ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally licensed amateur or citizens band station operator, and/or is used



exclusively for receive-only antennas. This section adopts the provisions and limitations as referenced in NH RSA 674:16, IV.

(2) Essential Services and Public Uses.

Henceforth, from the date of adoption of this ordinance, telecommunications facilities shall not be considered as infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunications facilities shall be considered a use of land, and is addressed by this ordinance.

- (F) Bonding, Security and Insurance. Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Town Administrator shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable and unwilling to remove the tower in accordance with Section G below. Bonding and surety shall be consistent with the provision in the Newmarket Site Plan Review Regulations Section 5.04. Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering accident or damage.
- (G) Removal of Abandoned Antennas and Towers. Any antenna or tower that is not operated for a continuous period of twelve (12) months, or is no longer needed for the operation of the network, shall be considered abandoned and hazardous to the public health and safety. The owner shall remove the abandoned facility, including tower footings, equipment shelter, and fencing within ninety (90) days of receipt of a declaration of abandonment from the Building Official notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within ninety (90) days, the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

## **5.08 DOWNTOWN COMMERCIAL OVERLAY DISTRICT.**

- (A) Purpose. The purpose of this district shall be to protect and enhance the commercial, social, civic and residential functions of the downtown village area. It is recognized that the village is an important place of business and of social interaction. Controls are intended to enhance the village by recognizing the importance of street level commercial space, providing for relatively high density, a mix of uses, and design compatible with the pedestrian scale and historic nature of the area.

- (B) Overlay District Boundaries. The Downtown Commercial Overlay District boundaries shall include all properties within the M-2 District and having frontage on Main Street or South Main Street.
- (C) Requirements.
  - (1) All Permitted Uses allowed in the M-2 district shall be allowed, except “Single Family Residential, Excluding Manufactured Housing”, “Duplex Residential”, and “Age-Restricted Housing” shall be prohibited in any street level space.
  - (2) All uses permitted by Special Exception in the M-2 District shall follow the applicable requirements of Section 2.02(B)(2), except that “multi-family residential” shall be prohibited in any street level space.

**SECTION 6.00: RESIDENTIAL OPEN SPACE DESIGN DEVELOPMENT BY SPECIAL USE PERMIT. (Adopted: September 1, 2004).**

**6.01 AUTHORITY .** Pursuant to RSA 674:21, the Planning Board is hereby authorized to grant a Special Use Permit for a residential Open Space Design development in accordance with the restrictions and requirements of this section. The Planning Board is further authorized to adopt amendments to the Subdivision Regulations in accordance with RSA 674:35 & 36 in order to further administer the requirements of this ordinance.

**6.02 PURPOSE .** This section provides an optional flexible method of residential development that is consistent with principles of sound planning and wise land use that are not implemented through traditional zoning methods. All residential developments seeking a special use permit shall be administered by the Planning Board to insure that Open Space Design development opportunities do not adversely impact neighboring properties, or the citizens and Town of Newmarket. The Planning Board shall consider the following purposes and balance them accordingly during review of individual applications.

- (A) Maintain and preserve rural character of the Town of Newmarket by allowing an alternative residential development option which preserves large areas of open space, provides for visual buffers from existing roads and residential development, and permits agricultural opportunities on parcels of open space.
- (B) Require the preservation of large, contiguous parcels of open space throughout the town and in neighboring jurisdictions and as found in the Newmarket Open Space Conservation Plan.
- (C) Provide for a diversity of housing types, opportunities, and styles.
- (D) Encourage flexible road design that will contribute to and enhance a rural atmosphere and maintain adequate safety design standards.
- (E) To encourage connected corridors of open land throughout town and region for preservation of habitat, environmental resources, and public enjoyment. To enhance the opportunity for protected open spaces in town and new subdivisions eventually adjoin each other, ultimately forming an interconnected network of conservation areas across the town.
- (F) Encourage Open Space Design in highly sensitive areas of Town that are part of an overall plan for the conservation of natural resources and preservation of large contiguous unfragmented parcels of land.
- (G) Require minimal lot sizes and the clustering of homes in close physical proximity to maximize preservation of open space lands.

- (H) Provide for a flexible and coordinated application process to reduce design costs to the applicant and promote a collaborative result with Board input. The special use permit is meant to allow the Board to participate jointly with the applicant to prepare a development that is consistent with this ordinance, applicable regulations, and the Master Plan for the Town of Newmarket
- (I) Minimize fragmentation of open space, habitat, and conservation land on a variety of scales.

**6.03 DEFINITIONS.** The following definitions specifically apply to this Section of the Zoning Ordinance:

- (A) Open Space - Common Land. Any parcel or area of land set aside as a result of an approval under this ordinance. This land area shall be designated for the benefit and enjoyment of the residents of the approved development. These areas may contain accessory structures for recreation purposes, water access, and improvements necessary and appropriate for the educational, recreational, cultural, social or other noncommercial/non-residential/non-industrial uses for residents of the subdivision, plus any utility services (including water wells, well radii, and individual and/or common septic facilities or land areas required for state septic approvals) utilized by the residents of the subdivision. Other than the above, common land shall be preserved in perpetuity through deed restriction, conservation easement, or other legal restriction. The restriction shall be recorded and designated on the approved and recorded plat to prohibit from any further use, subdivision, or development.
- (B) Open Space - Conservation Land. Land that is preserved as protected open space in perpetuity through deed restriction, conservation easement, or other legal restriction and that is designated on the approved and recorded plat. Restrictions must be tied to the title of the land, regardless of its subsequent ownership. Such land may be given to a public body dedicated to conservation of forests, parkland, etc., or to a private conservation trust, with the intent of preserving in its original ecological condition. Conservation land areas may be located within well radii and may contain wells and associated appurtenances but shall not contain septic facilities, drainage facilities, or other recreational structures. Only unpaved pedestrian trails and associated structures (such as kiosks, walking bridges, etc.) are permitted in these spaces. Conservation land is not required to be open to the public access unless it is required as part of an elective bonus provision provided for in this ordinance or at the wishes of the landowner.

- (C) Exclusive Use Land Division. Land ownership divisions that are created as part of this ordinance and are limited to the exclusive use of the owner. This land division is meant to provide flexibility in design, provide for the siting of structures and ownership. The ownership interest can include fee-title, condominium format, or any other reasonable method of division. The creation and modification of these land parcels shall be considered a subdivision in accordance with RSA 672:14 but shall not require compliance with ~~other~~ provisions of the zoning ordinance regarding frontage and *lot* area except as found in this section.
- (D) Community Homeowners Association. A private non-profit corporation, association or other non-profit and/or voluntary legal entity established by the developer for the benefit and enjoyment of the residents of the development. Membership in said association shall be mandatory for property owners and made a required covenant in any deed issued or conveyed. It shall provide voting and use rights in the common area when applicable and may charge dues to cover expenses, which may include tax liabilities of the common area, recreational or utility facilities. Articles of Association or Incorporation must be acceptable to the Planning Board and reviewed by Town Counsel and any other municipal, county, state agency, body, commission or department required by law to approve of the same.
- (E) Developable Land Base. The total area of land that forms the basis for determining the baseline for development and conservation land calculations. This area shall be calculated using the following limitations (the more restrictive designation shall apply):
- (1) Not Included:
    - (a) Open water / land that is subject to tidal flows.
    - (b) Very poorly drained soils.
    - (c) Slopes equal to or greater than 25%.
  - (2) Included up to and equal to 25% of the developable land base. The total of the following areas can be used, in their aggregate, to account for no more than 25% of the developable land base:
    - (a) Poorly drained soils.
    - (b) Lands that are within utility easements.
    - (c) Lands within the 100-year floodplain.

**6.04 LOCATION .** Open Space Design Subdivisions shall be permitted in the R-1, R-2, and M-4 Districts. Open Space Design Subdivisions in the M-4 District shall meet additional criteria with respect to outdoor recreation, such other requirements shall be adopted by the Planning Board as part of the Subdivision Regulations.

**6.05 SPECIAL USE PERMITS .** All Open Space Design developments shall obtain a special use permit from the Planning Board. The special use permit shall clearly set forth all conditions of approval and shall list all plans, drawings and other submittals that are part of the approved use. Prior to the granting of a Special Use Permit, the Planning Board shall hold a public hearing. Everything shown or otherwise indicated on a plan or submittal that is listed on the special use permit shall be considered to be a condition of approval. Construction shall not deviate from the stated conditions of approval without modification by the Planning Board.

**6.06 STANDARDS FOR APPROVAL .** In addition to standard review requirements of the subdivision regulations, the Planning Board must find the following conditions to have been met in order to grant a Special Use Permit.

- (A) The application is in compliance with all requirements of this ordinance.
- (B) There is no existing violation of state or federal environmental law or regulation or the Town of Newmarket Zoning Ordinance on the site. Applications where such a violation exists must include mitigation or remediation plans as part of an application.
- (C) The open space in the development is designed consistent with the requirements of this ordinance. This determination, to be made by the Planning Board, shall be made by considering the following aspects of the surrounding area.
  - (1) Protection of natural resources, determined through analysis of the following:
    - Protection of environmentally sensitive areas, including but not limited to, wetlands, shoreland buffers, wildlife corridors, significant groundwater resources, etc.;
    - Maintenance of viewsheds and other visually appealing aspects of the site;
    - Connectivity to regional open space areas and adjoining parcels;
    - Identification and preservation of wildlife corridors and rare and/or endangered species and supporting habitats.
  - (2) Protection of cultural resources, determined through analysis of the following:

- Establishment of new and protecting existing trailways for travel;
  - Protection of historic buildings or significant historical landscapes;
  - Establishment, protection and promotion for agricultural uses of the site;
  - Enhancement of other active or passive recreation facilities or opportunities.
- (3) At least 40% of the “developable land base” for the parcel must be set aside and designated as the minimum required open space.
- (a) At least 75% of minimum required open space shall be designated as “conservation land” as defined in the ordinance.
  - (b) Up to 25% of the minimum required open space may be considered “common land” as defined in the ordinance.
  - (c) Additional land that is not included in the developable land base shall be considered additional open space - conservation land as defined herein but shall not be subject to other requirements regarding shape and size.
- (4) The minimum restricted open space and/or common area within a development subject to a special use permit under this Ordinance shall be owned by and/or legally restricted by requirements of this ordinance by an easement owned by at least one of the following:
- (a) Community Homeowners Association, which may use it only in accordance with these restrictions, or may later grant the land to a private or public entity to hold as conservation land.
  - (b) A public or private conservation entity that shall hold and have enforcement rights related to the status of the land as conservation land.
  - (c) As additional protection, all land to be restricted shall include a notation on the recorded Mylar indicating the land as “This land is designated and restricted as Open Space in accordance with RSA 674:21-a and shall be enforceable by the Town of Newmarket.”
- (5) The minimum restricted open space shall be designed in accordance with additional regulations governing the shape,

configuration, location, and management plan adopted by the Planning Board as part of the Subdivision Regulations.

**6.07 APPLICATION PROCEDURE .** Applications for special use permits for an Open Space Design development shall be made in accordance with the procedures set forth in the relevant sections of the Subdivision Regulations of the Newmarket Planning Board. These applications shall be joined with an application for subdivision approval in the interest of procedural ease. The Planning Board shall adopt regulations providing for the following minimum required milestones in the application process.

- (A) Pre-application discussion. *Planning department.*
- (B) Environmental Resource and Yield Plan submittal. *Planning department.*
- (C) Yield equation and yield plan review and recommendation to the Planning Board. *Planning department.*
- (D) Submission hearing, preliminary plan review, and yield equation/plan approval. *Planning Board review – notification and public hearing required.*
- (E) Sitewalk.
- (F) Application Consideration.
- (G) Decision.

**6.08 APPROVAL OF APPLICATIONS .** The Planning Board may condition its approval on reasonable conditions necessary to accomplish the objectives of this ordinance, the Newmarket Master Plan, or any other relevant federal, state, or local regulation ordinance or law.

**6.09 PARENT PARCEL .** Lot Size and Frontage - The minimum parent parcel lot size shall be governed as any development that is required to produce a minimum of 5 acres of restricted open space that satisfies this ordinance. The minimum frontage for the development shall be of sufficient length to provide safe access for a roadway to access the parcel. The width of the access shall be a minimum of 50 feet and shall be dedicated as a fee title interest to the Town for a public roadway or a community homeowners association for a private roadway. Frontage on roads existing at the time of application shall be preserved as buffers to the maximum extent possible in addition to all required setbacks. The access to the development shall be over fee-title ownership land and cannot be through an easement of right-of-way.

**6.10 DENSITY .** Maximum density, in terms of the number of allowable units, for an Open Space Design shall be determined by use of an environmental resource and yield plan and development yield equation. All numbers that are 0.5 and over (x.5 and above) shall be rounded up to the next highest round number. The purpose of



the yield plan and the development yield equation is to show the density that is reasonably achievable with respect to environmental impacts, economic realities, and sound land use. The intent is to create a resource inventory that is part of the overall application and not to require an applicant to incur additional expense in the formal engineering design of two separate subdivision plans. Both methodologies shall be submitted showing the development count and the allowed density shall be determined by the Planning Board. The Planning Board shall adopt additional regulations, as part of the subdivision regulations that provide for the requirements and submittal of materials in accordance with this section.

- (A) An additional density bonus of 10% may be granted by the Planning Board as part of the Special Use Permit provided the minimum open space required as part of 6.06(C)(3) is greater than or equal to 50% of the developable land base.
- (B) An additional density bonus of 5% may be granted by the Planning Board as part of the Special Use Permit provided public access is granted to the open space for passive recreation purposes. Such grant shall be non-lapsing and provided for in the deeds of the parcels.

**6.11 GENERAL REQUIREMENTS .** This section supersedes any provision to the contrary found elsewhere in the Zoning Ordinance with respect to lot size, setbacks, frontage, access, and unit density for land divisions created under this ordinance.

- (A) Only single-family detached residential uses shall be permitted in an Open Space Design Development.
- (B) Setbacks, dimensions, and building sites. In addition to these minimum requirements, the Planning Board shall adopt regulations governing the definition and location of building sites, the design of shared access points and driveways, and other provisions necessary to carry out these requirements.
  - (1) The following frontage requirements shall apply.
    - (a) The development shall have 50' of frontage where the parcel accesses the existing Town road system and the access shall be within the town of Newmarket.
    - (b) Each single-family lot or unit shall have a minimum of 25' of exclusive use land with frontage on interior roadways or access roads for driveway purposes. Shared driveways and access easements along access roads may be permitted to satisfy this requirement.

- (c) No more than 3 houses may share a single access point to the interior roadways.
  - (d) No building shall be more than 500 feet from the interior roadways.
- (2) Developments that contain three dwelling units or less may be accessed from an existing town road via a single, shared private right-of-way provided the following additional requirements are provided:
  - (a) The buildings are no greater than 500 feet from the point of access.
  - (b) The parcel has 200 feet or more of frontage on an existing Town Road.
  - (c) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability pursuant to RSA 674:41(I)(d)(2) has been recorded in the county registry of deeds for the site for which the building permit is sought.
  - (d) The minimum required open space for any such development shall be 8 acres.
- (3) All developments shall contain a legal description that designate a reasonable amount of exclusive use land attributable to each particular structure for the purpose of ownership and reasonable accessory structures, landscaping, and yard areas. This provision is not meant to establish a minimum lot area and none shall be required beyond this provision.
- (4) The following setbacks shall apply to all residential structures within the development.
  - (a) 75' setback from all exterior property lines of the parent parcel.
  - (b) 25' setback from the edge of pavement for roadways within, and part of, the development.
  - (c) 30' structural separation for all single-family structures within the development.

- (d) 10' structural setback from all exclusive use land delineation lines, except where shared access easements are provided.

**6.12 OTHER REGULATIONS APPLICABLE .** The Planning Board shall adopt regulations as part of the Subdivision Regulations as directed herein and consistent with this ordinance which shall apply to the Open Space Design development, including the right to waive such regulations.

**6.13 UTILITIES .** All utilities serving the development shall be underground.

**6.14 EXPIRATION .** Any Special Use Permit shall expire if active and substantial development or building has not begun on the site by the owner or the owner's successor in interest within 12 months after the day of approval, or in accordance with the terms of approval. RSA 674:39.

## **SECTION 7.00: OTHER REQUIREMENTS.**

**7.01 HOME OCCUPATION AND HOME-BASED BUSINESS.** The purpose of allowing home occupations and home-based businesses is to enhance economic opportunities for residents without significantly detracting from the quality of the neighborhoods.

- (A) Home Occupation. One home occupation shall be permitted in each residential unit. No Town approval is required. This type of home occupation shall be such that there are no impacts detectable from beyond the property boundaries. There shall be no non-resident employees, no increase in traffic generation, no increase in parking, and no outside activity or storage of any kind. A sign meeting the standards of 4.00 shall be permitted.
- (B) Home-Based Business. One home-based business shall be permitted in each single-family residential unit, subject to the following:
  - (1) The home-based business is accessory to the residential use.
  - (2) Size Limits. The home-based business shall not exceed the following size limits without a Special Use Permit from the Planning Board. The Board shall consider the size of the lot, the suitability of access, ability to provide municipal services, impact on neighbors and the neighborhood, and other such considerations.
    - (a) Non-resident employees shall not be greater than one per acre of lot size, nor greater than a total of four.
    - (b) The home occupation shall be located within the dwelling or an accessory structure, and shall be limited to a floor area of not more than 1/3 of the total floor area of the primary residential structure including its attic, basement and attached garage.
  - (3) Home-based businesses uses may include office, personal or business service, light manufacturing, or other uses of a similar nature, but there shall be no on-site sale of goods except as is incidental to the primary activity or service.
  - (4) There shall be no outdoor activity or use, including storage and parking of commercial vehicles of 1.5 ton capacity or greater, beyond the provision of employee parking.

- (5) The home occupation shall not be such that it requires regular or frequent service by heavy commercial trucks since this would adversely impact the character of the neighborhood.
- (6) Sufficient on-site parking shall be provided.

## **7.02 MIXED USE DEVELOPMENT.**

- (A) Non-residential Only. Mixing of multiple non-residential uses on a lot shall be permitted.
- (B) Residential Only. There shall be no more than one residential structure per lot.
- (C) Mix of residential and non-residential uses on one lot. In certain instances, it is appropriate to have a mix of permitted uses on a single lot. Residential use may be permitted in combination with non-residential uses on a single lot or in a single structure, provided the following conditions are met:
  - (1) Permitted only in the M-1, M-2, M-3, and M-4 districts, and in other districts as specified elsewhere in this Ordinance
  - (2) Site Plan Review approval shall be required for the entire property to ensure that the site is suitable for the proposed mix of uses.
  - (3) Residential density shall be one unit less than the maximum permitted residential density for the district when non-residential uses are included.

## **7.03 ACCESSORY APARTMENTS.** (Amended: September 1, 2004).

- (A) Purpose. Accessory apartments are permitted in certain districts to ensure adequate provision of small, affordable residential units for various segments of the population, to help homeowners utilize excess space to generate revenue to help offset the costs of home ownership, and to encourage the adaptive reuse of historic homes. To balance this, the number of bedrooms in accessory apartments is severely limited to prevent excessive growth in the number of school age children.
- (B) One accessory apartment shall be permitted per detached single-family residence if granted a Special Exception by the ZBA. The accessory apartment shall be contained entirely within the detached single-family residence. The ZBA shall grant the Special Exception if the following conditions are met:

- (1) The accessory apartment shall be a minimum of 300 square feet and a maximum of 800 square feet of finished living area.
  - (2) The accessory apartment shall either be an efficiency apartment (without a separate bedroom), or a one-bedroom apartment.
  - (3) One of the dwelling units must be owner-occupied.
  - (4) There shall be a minimum of two parking spaces for each dwelling unit. A parking space shall be defined as a rectangular space 9' x 18'. Parking spaces shall be permitted within the setbacks if the location is over 50' from abutting dwelling units.
  - (5) No exterior changes shall be made which significantly alters the appearance of the structure from the street.
  - (6) Adequate water supply and sewage disposal shall be provided. If town water and sewer services the site, tie-in fees shall be paid.
  - (7) Granting of the Special Exception would be consistent with § 1.05(A)(2).
- (C) Subdivision and Site Plan Review approval are not required.

#### **7.04 SEXUALLY ORIENTED BUSINESSES**

- (A) Purpose. The purpose of this chapter is to regulate sexually oriented businesses which, unless closely regulated may have serious secondary effects on the community. These secondary effects include, but are not limited to, the following: depreciation of property values, deterioration of neighborhoods, increases in vacancy rates in residential and commercial areas, increases in incidences of criminal activity, increases in litter, noise, and the interference with residential property owner's enjoyment of their property in the vicinity of such businesses. It is the Town's intent to prevent community-wide adverse impacts, which can be brought about by the concentration of adult businesses in close proximity to each other or proximity to incompatible uses such as schools, churches, parks, public facilities and buildings and residentially zoned uses. The Town finds that it has been demonstrated in various communities that the concentration of adult businesses causes adverse impacts described above and can cause businesses and residents to move elsewhere. It is, therefore, the further purpose of this chapter to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses or their close proximity to incompatible uses, while permitting the location of such businesses in certain areas. (See additional information considered upon adoption of this ordinance available as reviewed and incorporated into the

record of the Planning Board as part of its hearing on February 13, 2001 regarding the adoption of this ordinance.)

(B) Definitions.

(1) "Establishment" means and includes any of the following:

- (a) the opening or commencement of any sexually oriented business as a new business;
- (b) the conversion of an existing business, in whole or in part, whether or not a sexually oriented business, to any sexually oriented business;
- (c) the additions of any sexually oriented business to any other existing sexually oriented business; or
- (d) the relocation of any sexually oriented business

(2) "Sexually oriented businesses" or "SOB" includes the following:

- (a) Any business conducted for the entertainment of adults, engaged in the selling, renting, or displaying of publications depicting the specified anatomical areas or specified sexual activities described herein or other material of a sexually explicit nature. Included in the definition is any business, that as substantial or significant course of conduct, sells, offers for sale, rents, exhibits, shows or displays publications depicting the anatomical areas or specified sexual activities described herein or other material of a sexually explicit nature. Also included in this definition is any business selling, renting, or displaying sexually oriented devices intended for use in the specified sexual activities.
- (b) A particular business at a particular location that sells, offers for sale, rents, exhibits, shows or displays specified anatomical areas or specified sexual activities in the form of a book, magazine, newspaper, pamphlet, film video or any other form or medium, or sexually oriented devices intended for use in the specified sexual activities, which receives 15% or more of the gross revenue from, or devotes 15% or more of the stock on hand or 15% or more of the gross floor area to such activity, is presumed to be engaging in "substantial or significant" conduct with respect to such activity.

- (c) Any business wherein the selling of any food or beverage served by employees engaged in partial or total nudity or exposed specified anatomical areas.
  - (d) Any business conducted for the entertainment of adults wherein an employee, patron or any other person engages in or are shown specified sexual activities or exhibit or engage in partial or total nudity or otherwise expose specified anatomical areas.
  - (e) Any business, which as a substantial or significant portion of its business, provides live or filmed entertainment wherein specified anatomical areas of the human anatomy are exposed.
- (3) "Specified anatomical areas" include any of the following, whether actual or simulated:
- (a) Human male genitals in a discernibly turgid state, even if completely and opaquely covered: or;
  - (b) Less than completely and opaquely covered human genitals or pubic region, (b) buttock, and (c) female breast below a point immediately above the top of the areola.
- (4) "Specified sexual activities" means and includes any of the following:
- (a) The fondling or sexual touching of human genitals, pubic regions, buttocks, anus, or female breasts; or
  - (b) Sex acts, normal or deviant, actual or simulated, including intercourse, oral copulation, or sodomy; or
  - (c) Masturbation, actual or simulated; or
  - (d) Excretory functions as part of, or in connection with, any of the activities set forth above.
- (C) A sexually oriented business may not sell or display "obscene matter", as that term is defined by New Hampshire Revised Statutes Annotated § 650:1 as it is amended.
- (D) Location requirements.



- (1) An SOB shall not be located within a Residential District or within seven hundred and fifty feet of any of the following:
  - (a) A church, synagogue, mosque, temple or building, which is used primarily for religious worship and related religious activities;
  - (b) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
  - (c) A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, or other similar public land within the town which is under the control, operation, or management of the town parks and recreation authorities;
  - (d) The property line of a lot devoted to a residential use as defined in the zoning code;
  - (e) An entertainment business which is oriented primarily towards children or family entertainment; or
  - (f) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State.

(E) Development and performance standards.

- (1) The following development standards shall apply to all sexually oriented businesses:
  - (a) No adult business shall be located in any temporary or portable structure.
  - (b) Trash dumpsters shall be completely enclosed by a screening enclosure so as not to be accessible to the public.

- (c) Off-street parking shall be provided as specified in the Site Plan Review Regulations.
- (d) The entire exterior grounds, including the parking lot and landscaped areas, shall be lighted in such a manner that all areas are clearly visible at all times.
- (e) Any signage shall conform to the requirements of the Newmarket Zoning Ordinance, and shall not contain sexually oriented photographs, silhouettes, or other pictorial representations.
- (t) All entrances to an SOB shall be clearly and legibly posted by a notice indicating that minors are prohibited from entering the premises.
- (g) No residential structure or any other nonconforming structure shall be converted for use as an adult business.
- (h) No residence, apartment, living quarters or mobile home shall be located on the parcel where an adult business is located.
- (i) The following performance standards shall apply to all sexually oriented businesses:
- (j) The establishment of any sexually oriented business shall required Site Plan Review approval from the Planning Board. As part of any application to the Planning Board, the applicant shall provide copies of any other permit required by the Town, State, or Federal government. No approval shall become final until local licensing requirements have been satisfied.
- (k) The adult business shall not conduct or sponsor any special events, promotions, festivals, concerts, or similar activities, which would create a demand for parking spaces beyond the number of spaces, required for the business.

#### **SECTION 7.05 AFFORDABLE ELDERLY HOUSING** (editorial note: Added 09/25/02)

- (A) Authority. In accordance with 674:21 (c) & (h), this ordinance is adopted to permit the establishment and construction of affordable elderly housing facilities in the Town of Newmarket. Consistent with the provisions of 674:21, this ordinance provides for a use incentive that permits increased densities and development flexibility.

- (B) Purpose. It is declared to be in the public interest and for the general welfare of the Town of Newmarket to permit the development of affordable elderly housing facilities specifically suited to address the special housing needs of the elderly. It is the purpose of this section to establish provisions under which affordable elderly housing developments may be permitted by the Planning Board in a flexible manner that recognizes the unique needs of such facilities in terms of design, cost and accessibility while protecting the health and safety of the residents and the general welfare of the citizens of Newmarket.

(C) Special Use Permit & Overlay District

Affordable elderly housing facilities are permitted by special use permit at a density and within an overlay zone as designated herein. The special use permit shall be administered by the Planning Board. The Board is authorized to grant, deny or grant with conditions a permit to establish an affordable elderly housing facility. Site plan review approval, in accordance with the Planning Board's regulations, shall also be required. The planning board shall be authorized to adopt additional regulations as part of the Site Plan Review Regulations in order to address the unique concerns related to affordable elderly housing facilities and implement this ordinance.

(D) Definitions

Affordable Elderly Housing -Housing used, designed and adapted for use by elderly citizens, fifty-five (55) years of age and older, and complying with the design requirements of the Architectural Barrier Free Design Code for the State of New Hampshire, as amended, and licensed by any appropriate state and/or federal agencies. " Affordable Elderly Housing" may be contained in a single building or group of buildings and shall have protective mechanisms (such as a land use restriction and/or conditions on local approvals) to assure occupation of such units by adults over 55 for a ~ period as long as the structures or use fails to comply with all underlying zoning requirements for the district in which it is located. An in perpetuity age restriction shall be enforceable by the Town of Newmarket as part of necessary local approvals. Conversion of affordable elderly housing facilities to other uses shall not occur unless the proposed use complies with all applicable zoning and site plan review regulations, even if such conversion requires the demolition and removal of excess units.

Affordable- An elderly housing facility shall be considered "affordable" if 75% or more of all units that are approved for the site, that have been constructed, are operated and constructed in accordance with the guidelines of or have been funded by a federal, state or local program that

provides below market-rate housing for low or moderate income persons as part of its purpose.

- (E) Criteria for Approval: The Planning Board may grant approval to permit the construction of affordable elderly housing only upon a finding that the following specified conditions exist. The applicant shall provide a narrative justifying its position on these criteria. The enforcement of these criteria shall be met to the maximum extent possible with due regard to the affordability of the project:
- (1) Any site on which an affordable elderly housing complex is proposed shall be reviewed with respect to the availability of shopping services, medical services and transportation services thereto, and that the proposed construction and design of the affordable elderly housing complex shall contain the usual amenities and living aids found in housing designed for use by the elderly and as required by state and federal law such as accessibility features, communal facilities, etc.
  - (2) That the public interest will be served generally if the proposal were to establish affordable elderly housing on the site and the establishment of an affordable elderly housing complex on the site would not cause a diminution in the property values of surrounding parcels.
  - (3) That any conflicts with the character of the adjacent properties will be minimal in terms of the size and bulk of the visible buildings, through the use of buffers, landscaping or location of the buildings on site. This provision is meant to assure that facilities are reasonably consistent either with residential style buildings or sufficiently secluded so as to minimize negative impacts to abutting property.
  - (4) The development shall be landscaped so as to enhance its compatibility with the Town with emphasis given to the use of existing natural features where possible.
  - (5) The design and site layout of the development shall emphasize the rural character of the Town, maximize the privacy of the dwelling units, preserve the natural character of land, provide for the separation of parking and neighboring residential uses, and consider such factors as orientation, energy usage, views, etc.
  - (6) Parking facilities shall comply with the existing site plan review regulations, unless the Planning Board authorizes waivers in accordance with information submitted showing a decreased need

in parking. The Planning Board may require land to be set-aside for future parking facilities and require adequate financial security to assure its construction with the Newmarket Site Review Regulations.

- (7) Seventy-five percent (75%) of all units on the site shall be identified as and remain affordable in accordance with this ordinance for as long as the on-site structures fail to comply with all other zoning requirements of the underlying district.
- (8) Affordable elderly housing facilities shall not include manufactured housing units.

(F) Requirements:

- (1) Zoning requirements for the underlying district shall apply unless covered below.
  - (a) The planning board shall, through its Site Plan Review regulations, review the location and provision of drainage facilities, adequate access for emergency vehicles, parking, landscaping and other facilities required to serve the residents of the facility.
  - (b) Setbacks for affordable elderly housing facilities shall be 35 feet from all property lines.
  - (c) The buffer shall be of sufficient opacity to adequately shield the abutting residential properties from the development. Buffer strips must contain vegetation that will partially screen the view from adjacent residential property during all seasons. This screening must limit visual contact between uses and create a strong impression of the separation of spaces.
  - (d) Existing trees and vegetation must be incorporated into the buffer strips or landscaping design. Fencing alone may not be considered an acceptable method of screening, but fencing may be an element of design.

(2) Overlay Zone:

Affordable Elderly Housing shall be permitted within the R-1, R-2 and R-3 districts on sites that are presently served (or is brought to the site) by both Town water and sewer and also have frontage and access limited to one of the: following roadways: Route 108 from

the Newfields boundary north to Elm Street, Route 152 or Bennett Way.

(3) Density:

- (a) As part of the Special Permit process, the Planning Board may permit an increased density for the number of units per developable acre of land. The Board shall consider factors such as sufficiency of access, water and sewer capacity, functionality, site design and layout. Standard permissible density shall be 8 units per developable acre. In no case shall the density, including bonuses, exceed 10 units per developable acre.
- (b) The calculation of "developable acre(s)" shall not include: very poorly drained soils, slopes exceeding 25% and water bodies. No more than 25% of the total calculation of developable acres may be comprised of poorly drained soils.
- (c) Density Bonus: When an applicant proposes a site design that includes landscaping and setbacks that meet the following criteria, a density bonus may be awarded by the board of up to 25% (to a maximum of 10 units per developable acre):
  - (1) The facility provides for a naturally landscaped buffer increased by an addition 25% where a proposed development abuts residential property.
  - (2) No roads or driveways shall be located within any part of this buffer zone, but may be located in the additional setback area.
  - (3) Where existing vegetation is not present, a buffer of similar opacity may be planted providing the same separation. Deciduous and coniferous trees shall be incorporated within the design and shall have a caliper of at least 3" at a point 6" above the root ball. One tree shall be planted for every 100 square feet of buffer area.
- (G) Saving Clause. If any portion of this Ordinance is found invalid by a court of competent jurisdiction, this finding shall not invalidate the remainder of this Ordinance.

**7.06 LIGHTING AND ILLUMINATION.** (editorial note: created June 18, 2003)

- (A) This ordinance is intended to eliminate problems of glare, minimize light trespass and obtrusive light created by improperly designed and installed outdoor lighting. Further purposes are to enhance and protect the quality of the New Hampshire night sky, Newmarket's rural character, and conserve energy and resources. These concerns are balanced while maintaining safety, security and productivity by establishing limits for the area that certain kinds of outdoor-lighting fixtures can illuminate and by limiting the total allowable illumination in the Town of Newmarket.
- (B) Prohibitions. This section applies to all lighting within the Town of Newmarket on any site except for legal non-conforming uses as covered in § 1.05 and temporary or emergency lighting.
  - (1) Mercury Vapor Lamps Fixtures and Lamps. The installation of any mercury vapor fixture or lamp for use as outdoor lighting is prohibited.
  - (2) Laser Source Light. The use of laser source light or any similar high intensity light for outdoor advertising or entertainment, when projected above the horizontal is prohibited.
  - (3) Searchlights. The operation of searchlights for advertising purposes is permitted by permit issued by the building inspector for a period of two nights (regardless of hours in operation) per year per lot.
  - (4) Neon. Neon lighting shall be limited to signage use and must be located within the exterior dimension of the sign as approved under this ordinance. Neon lighting as architectural accents or used as window displays is prohibited.
- (B) Residential lighting. These provisions are intended to prevent private and public nuisances and protect property values. This section applies to existing and proposed single-family and duplex residential uses.
  - (1) Residential lighting uses shall not be used or maintained in such a fashion as to inhibit or interfere with the use and enjoyment of neighboring properties.
  - (2) Spot lights, flood lights and other bright security lighting shall be limited in such a fashion as to not direct light onto neighboring property. Security lighting using motion detection switches are encouraged, but continual lighting must be angled or shielded in

such a fashion as to not produce glare onto neighboring property, particularly dwelling units.

- (3) Accent lighting, low wattage seasonal lighting and other fixtures commonly associated with residential uses are not intended to be prohibited by this ordinance.
- (C) Non-residential and multi-family uses. These provisions are intended to provide for more comprehensive lighting regulations due to potential negative impact on a greater number of residents and the public from inappropriate lighting installation or fixtures. In addition, it is the intent of these restrictions to prevent lighting conflicts and competing lighting installations in commercial areas of the Town of Newmarket, particularly where the Town encourages mixed-use development. This section applies to non-residential uses and any structure with three or more residential units. The Planning Board shall adopt regulations as part of the Site Plan Review Regulations that implement the purpose and intent of this ordinance.
  - (1) A Building Permit shall be required prior to the installation of any new fixtures on existing non-residential and multi-family uses. If the original Site Plan Approval granted by the Planning Board specified, in detail, the type and nature of lighting, any increase or change in lighting that may have an increased impact on the site shall be referred to the Planning Board for Site Plan Review. The Building Official shall approve a permit for other installations upon a finding that the fixtures comply with the following general lighting requirements.
  - (2) General Lighting Requirements:
    - (a) All lighting in the Town of Newmarket is required to have full-cutoff shielding, except for that portion of lighting installation that is consistent with the Millyard Lighting Theme as defined in the Newmarket Planning Board Site Plan Review Regulations.
    - (b) The new installation of up-lighting, by any method, is prohibited; however, the limited use of upward landscape lighting on a case-by-case basis may be approved provided the lighting does not spill onto neighboring properties or public ways.
    - (c) Non-cutoff wallpack type fixtures are prohibited.
    - (d) Existing lighting sources that do not present a health and safety issue with respect to glare on public ways or



nuisance as a result of off-site illumination shall be exempt from the provisions of this ordinance.

- (3) New fixtures accompanying establishment of new uses or change of use that requires Site Plan Review shall have lighting plans approved as part of the Site Plan Review process.

**7.07 IMPACT FEES.** (editorial note: created February 7, 2001)

(A) Authority and Applicability

- (1) This Ordinance is authorized by New Hampshire RSA 674:21 as an innovative land use control. The administration of this Ordinance shall be the responsibility of the Planning Board. This Ordinance, as adopted by the Town Council, as well as regulations and studies adopted by the Planning Board consistent with and in furtherance of this Ordinance, shall govern the assessment of impact fees imposed upon new development in order to meet the needs occasioned by that development for the construction or improvement of public capital facilities owned or operated by the Town of Newmarket or the Newmarket School District.
- (2) The public capital facilities for which impact fees may be assessed in Newmarket include, and is limited to, water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreation facilities not including public open space.
- (3) Prior to assessing an impact fee for one or more of the public capital facilities enumerated above, the Planning Board shall have adopted such studies or methodologies and related fee schedules that provide for a process or method of calculating the proportionate share of public capital improvement costs that are created by new development. For purposes of the within Zoning Ordinance, the “Methodologies for the Calculation of Impact Fees for Newmarket, New Hampshire” dated October 23, 2000, are those prepared by Bruce Mayberry, Planning Consultant, Yarmouth, Maine and approved by the Newmarket Planning Board on January 30, 2001 and are incorporated herein by reference and made a part hereof. Said adopted methodologies may only be revised after a public hearing by the Planning Board and after a subsequent public hearing and amendment of the within Zoning Ordinance by the Town Council. Such calculations shall reasonably relate to the capital costs associated with the increased demand placed on capital facility capacity by new development.
- (4) The following regulations shall govern the assessment of impact fees for public capital facilities in order to accommodate increased demand on the capacity of these facilities due to new development.

(B) Findings

The Town of Newmarket hereby finds that:

- (1) The Town of Newmarket is responsible for and committed to the provision of public capital facilities and services at standards determined by the Town to be necessary to support development in a manner which protects and promotes the public health, safety and welfare;
- (2) Public capital facilities have been and will be provided by the Town utilizing funds allocated through the Capital Improvements Program, which has been adopted and regularly updated by the Planning Board per the Newmarket Town Charter;
- (3) An impact fee ordinance for public capital facilities is consistent with the goals and objectives of the Master Plan and the Capital Improvements Program of the Town of Newmarket;
- (4) New development in Newmarket will create the need for the construction, equipping, or expansion of public capital facilities in order to provide adequate public capital facilities for its residents.
- (5) Impact fees may be used to assess an equitable share of the growth-related cost of the capacity of public capital facilities resulting from the new development in proportion to the facility demands created by that development;
- (6) According to data compiled by the NH Office of State Planning, as of 1999 Newmarket had the lowest equalized property valuation per capita of all cities and towns in Rockingham County;
- (7) An analysis of equalized valuation per capita prepared by the NH Office of State Planning for years 1980, 1990 and 1999 indicates that Newmarket's equalized valuation per capita was 30-40% lower than the state average in those comparison years.
- (8) In the absence of impact fees, anticipated residential and non-residential growth and associated capital improvement costs will likely necessitate an excessive expenditure of public funds in order to maintain adequate public capital facility standards and to promote and protect the public health, safety, and welfare.
- (9) Impact fees assessed pursuant to this Ordinance will not exceed the costs of:
  - (a) Providing additional or expanded public capital facilities necessitated by new development in Newmarket; and/or

- (b) Compensating the Town of Newmarket or the Newmarket School District for public capital facility capacity that it provided in anticipation of new development in Newmarket.

(C) Definitions

- (1) Fee Payer. The applicant for the issuance of a permit that would create new development as defined in this Ordinance.
- (2) Gross Floor Area. The sum of the areas of all floors of main and accessory buildings on the lot as measured to the outside surfaces of the exterior walls. The gross floor area shall include basements, lobbies, and stair openings, elevator shafts and storage. The gross floor area shall exclude open wells (atriums), mechanical rooms, crawl spaces and attics without floors, attics used only for mechanical services, porches, balconies and open-sided roofed-over areas.
- (3) New Development. An activity, which results in:
  - (a) The creation of a new residence or residential units (as defined by Section 1.11 “Definition” contained in this Zoning Ordinance); or
  - (b) The conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of residential units; or
  - (c) Construction of a new non-residential building or, a net increase in the gross floor area of any non-residential building; or
  - (d) The conversion of an existing use to another use if such change creates a net increase in the demand on public capital facilities that are the subject of impact fee assessment methodologies adopted by the Planning Board; or
  - (e) A new or modified service connection to the public water system or the public wastewater disposal system of the Town of Newmarket that would result in a net increase in demand on the capacity of these facilities.

New Development shall not include the replacement of an existing mobile home, or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in its size, intensification of, or type of use, and where there is no net increase in demand on the public capital facilities of the Town of Newmarket.

(D) Computation of Impact Fee

- (1) The amount of each impact fee shall be assessed in accordance with written procedures or methodologies adopted and amended by the Planning Board for the purpose of public capital facility impact fee assessment in Newmarket. These methodologies shall set forth the assumptions and formulas comprising the basis for impact fee assessment, and shall include documentation of the procedures and calculations used to establish impact fee schedules. The amount of any impact fee shall be computed based on the municipal public capital improvement cost of providing adequate public capital facility capacity to serve new development. Such documentation shall be available for public inspection in the Finance Office of the Newmarket Town Hall.
  - (2) In the case of new development created by the conversion or modification of an existing use, the impact fee assessed shall be computed based upon the net increase in the impact fee assessment for the new use as compared to the highest impact fee that was, or would have been, assessed for the previous use in existence on or after the effective date of this Ordinance.
- (E) Assessment of Impact Fee-
- (1) Impact fees shall be assessed by the Code Enforcement Officer, prior to or as a condition to issuance of a building permit on new development to compensate the Town of Newmarket for the proportional share of the public capital facility costs generated by this development.
  - (2) Any person who seeks a permit for new development, including permits for new or modified service connections to the public water system or public wastewater disposal system that would increase the demand on the capacity of those systems, is hereby required to pay the public capital facility impact fees authorized under this Ordinance in the manner set forth herein, except where all or part of the fees are waived in accordance with the criteria for waivers established in this Ordinance.

(F) Waivers

The Planning Board may grant full or partial waivers of impact fees where the Board finds that one or more of the following criteria are met with respect to the particular public capital facilities for which impact fees are normally assessed.

- (1) A person may request a full or partial waiver of public school capital facility impact fees for those residences or residential units that are lawfully restricted to occupancy by senior citizens age 62 or over or to households with at least one person age 55 and over, as applicable, in a development that is maintained in compliance with the provisions of RSA 354-A:15, Housing For Older Persons. The Planning Board may waive school impact fee assessments on age-restricted units where it finds that

the property will be bound by lawful deeded restrictions on occupancy for a period of at least 20 years.

- (2) The Planning Board may agree to waive all or part of an impact fee assessment and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that would involve a contribution of real property or the construction of capital facilities, the Planning Board shall submit a copy of the waiver request to the Town Council for its review and consent prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. Full or partial waivers may not be based on the value of exactions for on-site or off-site improvements required by the Planning Board as a result of subdivision or site plan review, and which would be required of the developer regardless of the impact fee assessments authorized by this Ordinance.
- (3) The Planning Board may waive an impact fee assessment for a particular capital facility where it finds that the subject property has previously been assessed for its proportionate share of public capital facility impacts, or has contributed payments or constructed capital facility capacity improvements equivalent in value to the dollar amount of the fees waived.
- (4) The Planning Board may waive an impact fee assessment where it finds that, due to conditions specific to a development agreement, or other written conditions or lawful restrictions applicable to the subject property, the development will not increase the demand on the capacity of the public capital facility or system for which the impact fee is being assessed.
- (5) A Fee Payer may request a full or partial waiver of the amount of the impact fee for a particular development based on the results of an independent study of the demand on public capital facility capacity and related costs attributable to that development. In support of such request, the Fee Payer shall prepare and submit to the Planning Board an independent fee calculation or other relevant study and supporting documentation of the public capital facility impact of the proposed development. The independent calculation or study shall set forth the specific reasons for departing from the methodologies and schedules adopted by the Town. The Planning Board shall review such study and render its decision. All costs incurred by the Town for the review of such study, including consultant and counsel fees, shall be paid by the fee payer.
- (6) A person may request a full or partial waiver of impact fees for construction within a plat or site plan approved by the Planning Board

prior to the effective date of this Section. Prior to granting such a waiver, the Board must find that the proposed construction is entitled to the four year exemption or vested status provided by RSA 674:39, pursuant to that statute. This waiver shall not be applicable to phases of a phased development project where active and substantial development, building and construction has not yet occurred in the phase in which construction is proposed.

(G) Payment of Impact Fee

- (1) No building permit shall be issued for new development as defined in this Ordinance until the Code Enforcement Officer has assessed the impact fee. The Code Enforcement Officer shall not issue a certificate of occupancy for the development on which the fee is assessed until the impact fee has been paid in full or has been waived by the Planning Board. In the interim between assessment and collection, the Planning Board may authorize another mutually acceptable schedule for payment, or require the deposit of an irrevocable letter of credit or other acceptable performance and payment guarantee with the Town of Newmarket.
- (2) Where off-site public capital improvements have been constructed, or where such improvements will be constructed simultaneously with new development, and where the Town has appropriated necessary funds to cover such portions of the work for which it will be responsible, the Code Enforcement Officer may collect the impact fee for such capital facilities at the time a building permit or a permit to connect to the public water or public wastewater system, is issued.

(H) Appeals

- (1) A party aggrieved by a decision made by the Code Enforcement Officer pursuant to the assessment or collection of impact fees authorized by this Section may appeal such decision to the Zoning Board of Adjustment as provided by RSA 676:5, as amended;
- (2) The decision of the Zoning Board of Adjustment may be appealed to the Superior Court as provided by RSA 677:2-14.
- (3) A party aggrieved by a decision of the Planning Board under this Section may appeal such decision to the Rockingham County Superior Court as provided by RSA 676:5, III and RSA 677:15, as amended.

(I) Administration of Funds Collected

- (1) All funds collected under this Ordinance shall be properly identified and promptly transferred for deposit into separate impact fee accounts for each

type of public capital facility for which impact fees are assessed. Each impact fee account shall be a non-lapsing special revenue fund account and under no circumstances shall such revenues deposited therein accrue to the General Fund. The Town Treasurer shall have custody of all accounts, and shall pay out the same upon approved vouchers through the accounts payable system.

- (2) The Finance Director shall record all fees paid, by date of payment and the name of the person making payment. The Finance Director shall maintain an updated record of the current ownership, tax map and lot reference number of properties for which fees have been paid under this Ordinance for each permit so affected for a period of at least nine (9) years from the date of receipt of the impact fee payment associated with the issuance of each permit.
  - (3) Impact fees collected may be spent from time to time by order of the Town Council and shall be used solely for the reimbursement of the Town or the Newmarket School District, in the case of school impact fees, for the cost of the public capital improvements for which they were collected, or to recoup the cost of public capital improvements made by the Town or the School District in anticipation of the needs for which the impact fee was collected.
  - (4) In the event that bonds or similar debt instruments have been or will be issued by the Town of Newmarket or the Newmarket School District for the funding of capacity-related improvements, impact fees from the appropriate related public capital facility impact fee accounts may be applied to pay debt service on such bonds or similar debt instruments.
  - (5) At the end of each month, the Finance Director shall prepare a report to the Town Treasurer, giving particular account of all impact fee transactions during that month. At the end of each fiscal year, the Finance Director shall prepare a report to the Town Council, Planning Board, Town Treasurer, and the Town Administrator, giving a particular account of all impact fee transactions during the year.
- (J) Use of Funds
- (1) Funds withdrawn from the public capital facility impact fee accounts shall be used solely for the purpose of acquiring, constructing or expanding, equipping, or improving public capital facilities, to increase their capacity, or to recoup the cost of such capacity improvements.
  - (2) Effective upon passage of this Ordinance the annual updates of the Newmarket Capital Improvement Program shall contain a procedure for assigning funds, including any accrued interest, from all of the public



capital facilities impact fee accounts for specific public capital facility improvement projects related expenditures or debt service.

Monies, including any accrued interest not assigned in any fiscal period, shall be retained in the same public capital facilities impact fee account until the next fiscal period, except as provided by the refund provisions of this Ordinance.

- (3) Funds may be used to provide refunds as described in the Ordinance.

(K) Refund of Fees Paid

- (1) The current owner of record of property for which an impact fee has been paid shall be entitled to a full or partial refund, whichever is applicable, plus accrued interest under the following circumstances:
  - (a) When either the full or partial portion of the impact fee, whichever is applicable, has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the full and final payment of the fee; or
  - (b) When the Town, or in the case of school impact fees, the Newmarket School District has failed, within the period of six (6) years, from the date of the full and final payment of such fee, to appropriate their proportionate share of related public capital improvement costs.
- (2) The Town Council shall provide all owners of record, who are due a refund, written notice of the amount due, including interest accrued, if any, and shall promptly cause said refund to be made.

(L) Additional Assessments

Payment of the impact fee under this Ordinance does not restrict the Town or the Planning Board from requiring other payments or improvements from the Fee Payer, as required by the subdivision or site plan review regulations, or as otherwise authorized by law.

(M) Scattered or Premature Development

Nothing in this Ordinance shall be construed so as to limit the authority of the Newmarket Planning Board to deny new proposed development which is scattered or premature, requires an excessive expenditure of public funds, or otherwise violates the Town of Newmarket Zoning Ordinance, or the Newmarket Planning Board Site Plan Review Regulations or Subdivision Regulations, or

which may otherwise be lawfully denied.

(O) Review and Change in Method of Assessment

The methodologies adopted by the Planning Board for impact fee assessment, and the associated fee schedules, shall be reviewed periodically and amended as necessary by the Planning Board. Such review shall take place not more than five years from the initial adoption of this Ordinance, nor more frequently than annually, except as required to correct errors or inconsistencies in the assessment formula. Any proposal for changes in the impact fee assessment methodology or the associated fee schedule shall be submitted to the Town Council for its review and comment prior to final consideration of the proposed changes by the Planning Board. The review by the Planning Board and Town Council may result in recommended changes or adjustments to the methodology and related fees based on the most recent data as may be available. No change in methodology or in the impact fee schedules shall be adopted by the Planning Board until it shall have been the subject of a public hearing noticed in accordance with RSA 675:7.